



Committee: Directly to Council
Committee Review: N/A
Staff: Christine Wellons, Legislative Attorney
Purpose: To receive testimony – no vote expected

UPDATED
AGENDA ITEMS #2B&2C
January 25, 2022
Public Hrg./Worksession 2

SUBJECT

Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments

Lead Sponsor: Council President at the Request of the County Executive

EXPECTED ATTENDEES

Dr. James C. Bridgers, Jr., Acting Health Officer
Dr. Earl Stoddard, Assistant Chief Administrative Officer
Dr. Raymond Crowell, HHS Director
Silvia Kinch, Office of the County Attorney
Public speakers

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

Second public hearing and second worksession regarding a Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments.

DESCRIPTION/ISSUE

The resolution would approve a Board of Health regulation to:

- Require restaurants, bars, fitness centers, and other “covered establishments and facilities” – in a phased-in approach – to require patrons to provide proof of vaccination against COVID-19 before entering indoor areas;
- Exempt certain establishments and facilities from the requirement, including establishments and facilities providing essential government services and social services; and
- Exempt certain individuals from the requirement, including: (1) individuals who enter the facility for a quick and limited purpose; and (2) individuals who are entitled to medical or religious accommodations.

Under the regulation, the phased-in vaccination requirement would occur as follows:

- Effective January 22, 2022: proof of 1 dose required for patrons 12 years and older;
- Effective February 15, 2022: proof of all doses (excluding boosters) required for patrons 12 years and older; and
- Effective March 1, 2022: proof of all doses (excluding boosters) required for patrons 5 years-and-one-month and older.

This report contains:

Staff memorandum	Pages 1-14
Proposed Resolution	©1
Similar orders in other jurisdictions	
District of Columbia	©7
New York City	©13
Philadelphia	©18
Chicago	©28
Questions posed by Councilmembers to Executive Staff	©32
Responses from Executive Staff	©34
Public Testimony	
Mabilia Rastello	©38
Michael Patrick	©39
Tyler & Nicole Johansen	©40
Michael Spencer	©44
Aaron Droller	©46
Chris Lee	©53
Diana Patton	©54
Erik Amick	©55
Erik Gomez	©56
Joe Gresock	©57
John Hansman	©58
Kevin Judge	©59
Laura Griffiths	©60
Rachel Flounlacker	©62
Sharon S. Nanson	©63
Robert McGrane	©64
Theodore Kavadias	©66
Dana Sklut	©67
Amy Zimmerman	©70
Yelena Gakh	©71
Abby McClintock	©72
John Eckhardt	©73
Daniela D’Orazio	©76
Peter D’Orazio	©77
Jennifer Cashen	©78
Tracey Butler	©79
Lori McCarthy	©81
Vivan Kuriakose	©82
Karin Lee	©83
Judith Rudolph	©85
Jared Hautamaki	©86
Barbara Zellers	©87
Daniel Keegan	©88
Amy Sklut	©89
Greg Herbold	©90
Marie Waldo	©91

Ghina Saddiqi	©92
Worksession Testimony	
Hispanic Chamber of Commerce	©94
Greater Silver Spring Chamber	©96
Maryland Hotel Lodging Association	©98
Restaurant Association of Maryland	©102
Greater Bethesda Chamber of Commerce	©104

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AGENDA ITEMS #2B & 2C
January 25, 2022
Public Hearing & Worksession

MEMORANDUM

January 24, 2022

TO: County Council

FROM: Christine Wellons, Legislative Attorney

SUBJECT: Resolution to approve a Board of Health Regulation to prevent the spread of COVID-19 in the County – Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments

PURPOSE: Public hearing and Council worksession

Expected Attendees

Dr. James C. Bridgers, Jr., Acting Health Officer
Dr. Earl Stoddard, Assistant Chief Administrative Officer
Dr. Raymond Crowell, HHS Director
Silvia Kinch, Office of the County Attorney
Public speakers

The Council, sitting as the Board of Health, introduced on January 11, 2022 a Resolution to approve a Board of Health Regulation to prevent the spread of COVID-19 in the County – Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments. The resolution is sponsored by the Council President at the request of the County Executive. An initial public hearing and an initial Council worksession occurred on January 18. A second public hearing and second worksession are scheduled for January 25.

The resolution would approve a Board of Health regulation to:

1. Require restaurants, bars, fitness centers, and other non-essential “covered establishments and facilities” – in a phased-in approach – to require patrons to provide proof of vaccination against COVID-19 before entering indoor areas;
2. Exempt certain establishments and facilities from the requirement, including establishments and facilities providing essential government services and social services; and
3. Exempt certain individuals from the requirement, including: (a) individuals who enter the facility for a quick and limited purpose; and (b) individuals entitled to medical or religious accommodations.

Under the regulation, the phased-in vaccination requirement would occur as follows:

1. Effective January 22, 2022: proof of 1 dose required for patrons 12 years and older;
2. Effective February 15, 2022: proof of all doses (excluding boosters) required for patrons 12 years and older; and
3. Effective March 1, 2022: proof of all doses (excluding boosters) required for patrons 5 years-and-one-month and older.

BACKGROUND

Pursuant to Md. Code Ann. Local Government §10-328(b), a county may provide for the prevention of contagious diseases in the county. A local Board of Health may, pursuant to Md. Code Ann. Health Gen. §3-202(d), adopt and enforce rules and regulations on any cause of disease in the County. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.

Rule 4(d) of the Council's Rules of Procedure provides that before the Board of Health adopts a regulation, the Council President must advertise a public hearing in a newspaper circulated throughout the County at least 15 days before the hearing and notify the governing body or chief executive officer of each municipality in the County at least 15 days before the hearing. Rule 4(d) allows the President to waive these notice provisions if a public health emergency requires immediate action. The Council President has waived these notice requirements because of the public health emergency caused by COVID-19. Notice was sent to each municipality in the County on January 7, 2022.

SUMMARY OF THE FIRST PUBLIC HEARING

At the first public hearing on January 18, approximately 20 speakers testified against the proposed regulation. In addition, numerous individuals and business owners have submitted written testimony against the regulation. (© 38)

Some of the reasons cited by opponents of the regulation include:

- Personal liberty;
- The unintended consequence of reducing residents' participation in exercise at gyms, when exercise reduces risks of obesity and heart disease;
- Concerns about the efficacy of vaccines;
- Concerns about health privacy and the privacy of children;
- Uncertainty about the goal of the regulation since the County has a highly vaccinated population already;
- Concerns about implementation of the regulation by businesses;
- Concerns about the lack of a sunset clause; and
- Concern about heightening conflicts among residents, and between residents and businesses.

SUMMARY OF THE FIRST COUNCIL WORKSESSION

At the initial worksession, the following organizational representatives participated in a panel discussion regarding the proposed regulation:

- Melvin Thompson, Restaurant Association of Maryland
- Mauricio Vasquez, Hispanic Chamber of Commerce of Montgomery County
- Jane Redicker, Greater Silver Spring Chamber of Commerce
- Ellen Coren, Greater Bethesda Chamber of Commerce
- Janice Freeman, African American Chamber of Commerce
- Monica Jefferies Hazangeles, Strathmore
- Amy Rohrer, Maryland Hotel Lodging Association

Mr. Thompson explained that the Restaurant Association of Maryland opposes the regulation due to anticipated negative effects on business. Mr. Vasquez stated that the Hispanic Chamber of Commerce has significant concerns with the regulation and stated:

This legislation will further promote social inequities, setting up the opportunity to “tell” on someone you don’t like. Because the Enforcement clause sets up the County Police as Enforcer, it allows a police officer to inspect stores and food establishments for infractions, questioning patrons, and possibly being perceived to target people of color, rightly or wrongly, asking some patrons to leave and fining business owners who may have left an unvaccinated patron in. Unintended targeting of sensitive populations will inevitably ensue, whether we intend it or not.... (© 94).

Ms. Redicker identified extensive logistical concerns of members of the Greater Silver Spring Chamber of Commerce, including concerns about whether businesses will need to hire bouncers at entryways and how businesses will implement religious and medical accommodations. (© 96). Ms. Coren echoed many of these concerns on behalf of the Greater Bethesda Chamber of Commerce.

Ms. Jefferies provided information regarding how the Strathmore already requires proof of COVID vaccination by its patrons. The Strathmore has extensive information about its vaccination policy on its website. [Vax FAQs \(strathmore.org\)](http://strathmore.org/vax-faqs)

Ms. Rohrer explained that her member hotels are concerned that the regulation would require them to hire staff that they cannot find or afford; that events will move elsewhere to jurisdictions that do not require proof of vaccination; and that the regulation would put hotel staff in a position of enforcement. Ms. Rohrer noted a number of requested amendments. (© 98)

ISSUES FOR THE COUNCIL’S CONSIDERATION

The Council might wish to consider the following issues and potential amendments in connection with the pending resolution. Additional issues and potential amendments might be identified following the second public hearing on January 25, as well as pending additional input from the January 18th panelists.

1. Experiences of Other Jurisdictions

Several other local jurisdictions – including the District of Columbia and New York City – have instituted vaccine “passport” requirements, which prohibit individuals from entering certain non-essential businesses and establishments without proof of vaccination against COVID-19. Samples of other jurisdictions’ requirements are enclosed at ©7, and the following chart summarizes the jurisdictions’ requirements and compares them to the proposed Board of Health regulation. Council staff have not identified any Maryland counties that require individuals to prove vaccination in order to enter non-essential establishments.

Comparison of the Proposed Board of Health Order to Other Jurisdictions that Require Proof of Vaccination to Enter Certain Businesses

Jurisdiction	Vaccination Definition / Inclusion of Boosters	Establishments Covered by the Requirement	Exempt Establishments	Exempt Individuals	Inclusion of Employees of Covered Establishments
<p>Proposed Montgomery County Board of Health Regulation (Phased-in effective date, beginning January 22)</p>	<p>Would require proof of 2 shots of a 2-shot vaccine, or 1 shot of a 1-shot vaccine; does not include boosters.</p>	<ul style="list-style-type: none"> -Restaurants, bars, and nightclub establishments -Indoor entertainment establishments -Indoor exercise and recreational establishments -Indoor event and meeting establishments 	<ul style="list-style-type: none"> -Houses of worship -Grocery stores, farmers markets, and charitable food service facilities -Pharmacies, hospitals, and other health care facilities -Private meeting rooms at offices or residences -Retail establishments -Facilities where the public accesses government services or essential human services -Polling places -PreK through grade 12 public and nonpublic schools -Childcare programs -Senior centers -Community centers. 	<ul style="list-style-type: none"> -individuals entitled to religious or medical accommodations -individuals entering a covered establishment for a quick and limited purpose (e.g., picking up takeout) 	<p>Does not include employees</p>
<p>District of Columbia (Phased-in effective date, beginning January 15)</p>	<p>Requires proof of “a full initial course of vaccination”; does not include boosters.</p>	<p>-Same as the proposed Board of Health regulation</p>	<p>-Same as the proposed Board of Health regulation, except does not list senior centers, schools, childcare programs, or community centers.</p>	<p>-Same as the proposed Board of Health regulation</p>	<p>Does not include employees</p>

Jurisdiction	Vaccination Definition / Inclusion of Boosters	Establishments Covered by the Requirement	Exempt Establishments	Exempt Individuals	Inclusion of Employees of Covered Establishments
New York City (Effective August 17, 2021)	Initially required proof of <i>only 1 dose</i> of a vaccination, plus a matching identifying identification. Currently, 1 dose of a 1-dose vaccine is required, or 2 doses of a 2-dose vaccine.	-Indoor entertainment or recreational setting -Indoor food services -Indoor gyms and fitness settings	-Pre-kindergarten through grade twelve (12) public and non-public schools and programs -Child care programs -Senior centers -Community centers -Locations within a residential or office building, the use of which is limited to residents, owners, or tenants of that building	-Individuals entering the premises for a quick and limited purpose -Certain non-resident athletes and artists	Includes full-time and part-time employees
Philadelphia, PA (Phase-in effective dates beginning January 3, 2022)	Requires proof of 2 doses of 2-dose vaccine or 1 dose of 1-dose vaccine	-Indoor dining locations only	-Food courts -PreK-12 schools -Hospitals -Places where food or drink are consumed as a part of a religious practice -Grocery stores -Charitable food organizations	-Individuals using the indoor dining facility for a quick (less than 15 minute) and limited activity -Individuals who qualify for religious or medical accommodations -Certain athletes and performers	-Includes employees, with some exceptions
Chicago, IL (Effective January 3, 2022)	Proof of “fully vaccinated” under CDC guidelines or Chicago health department	-Establishments serving food or beverages -Gyms and fitness venues	-O’Hare and Midway airports -Houses of worship -K-12 schools -Charitable food service establishments	-Certain nonresident athletes and performers -Individuals who provide proof of a medical or religious exemption, plus	All covered establishments must implement OSHA standards related to employee vaccination and testing, regardless

Jurisdiction	Vaccination Definition / Inclusion of Boosters	Establishments Covered by the Requirement	Exempt Establishments	Exempt Individuals	Inclusion of Employees of Covered Establishments
Chicago (continued)	guidelines, whichever are stricter. Individuals 16 and over also must provide identification.	-Entertainment and recreation venues	-Locations within a residential or office building, the use of which is limited to residents, owners, or tenants of that building	proof of a negative COVID test within the last 72 hours -Individuals voting in, or participating in, an election -Individuals who enter the location for less than 10 minutes to carry out food, make a delivery, or use the bathroom -Individuals younger than 18 who are participating in a school or after-school program	of the size of the employer.

Research on Outcomes. Council staff (Ms. Rodriguez-Hernandez) has provided the following research about the known effects and outcomes of vaccine requirements in other domestic and international jurisdictions:

○ **Domestic**

In the United States, approximately 20 states have banned vaccine passport requirements¹. A much smaller number of states, specifically jurisdictions within states (not whole states), have started to rollout vaccine passports that are tied to working in and accessing non-essential establishments. New York, Hawaii, and California were the first three states to have vaccine passports implemented within their borders. A summary of the limited information on known impacts is outlined below.

- New York City’s “Key to NYC” vaccine passport² is required to enter indoor dining, fitness, and entertainment/meeting venues. A month after the implementation of the passport, the City announced the vaccination rate increased by 9% overall, with a 13% increase for those ages 18-34. City officials canvassed over 50,000 businesses to receive their input on the passport. Since the implementation, only 15 businesses (of 31,000 business reviewed) were found in violation³. New York City is requiring those between 5-12 years old to at least have one shot and those 12-years-old + to be fully vaccinated.
- The Hawaii island of Oahu implemented the Safe Access Oahu program from September to November 2021. The program requires employees and visitors to be fully vaccinated or have a negative covid test result within 48 hours of entering the establishment. Children under 12 are exempt from this requirement. The Economic Research Organization at the University of Hawaii conducted a survey to assess the impacts of the vaccine/testing requirement on businesses. A report has not yet been released with their findings, but the survey is closed.⁴
- While the City of San Francisco has required proof of vaccination for those 12 years of age and older to enter/work in indoor non-essential establishments since August 2021 (and removed the mask requirement), the city has recently announced that masks will be required again even for settings with “stable populations of fully vaccinated people.”⁵
- Anecdotally, businesses in all three jurisdictions are quoted with negative reactions towards the vaccine passport requirement.

○ **International**

While vaccine requirements to enter non-essential establishments in the United States is limited and recent, several countries have implemented this requirement earlier in 2021.

¹ It is important to note that media does not clearly differentiate the term “vaccine passport” tied to accessing establishments and “digital certification” related to general access to personal covid vaccine records online.

² <https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page>

³ <https://www.nbcnewyork.com/news/local/vax-rate-increased-since-key-to-nyc-mandate-went-into-effect-last-month-de-blasio/3320602/>

⁴ <https://www.hawaiinewsnow.com/2021/09/16/new-survey-aimed-gauging-impacts-safe-access-oahu-businesses/>

⁵ <https://www.latimes.com/california/story/2021-12-29/san-francisco-and-other-bay-area-communities-tighten-mask-rules>

A December 13, 2021, study⁶ comparing six countries that introduced covid vaccine passports (for access to non-essential sites) found that the requirement led to increased vaccinations between 20-days prior to the deadline and 40-days after the deadline in countries that had lower than average vaccination rates prior to the announcement. Specifically, increases in vaccination rates were seen in those younger than 20 years-old and 30-49 years-old. The countries included in the study had deadlines between April-August 2021: Denmark, Israel, Italy, France, Germany, and Switzerland. The study could not break down impacts based on race/ethnicity or socioeconomic status. The authors proclaim this is the first empirical study on the issue of covid certification and vaccine uptake.

2. Potential Inclusion of Boosters

At the introduction of the pending resolution, Councilmembers discussed briefly with Executive staff whether the regulation should be amended to include COVID boosters. Dr. Stoddard mentioned the possibility that the CDC might alter its guidance to include boosters within the meaning of “fully vaccinated.”

In Montgomery County, the percentage of the total population fully vaccinated is approximately 84%. Yet the percentage of the fully vaccinated population that is boosted is only about 43%. See [CDC COVID Data Tracker](#) (visited on January 12, 2022). As explained by the Health Officer, the booster is important to increasing immunity against the virulent Omicron variant. At the first worksession on the regulation, chambers of commerce expressed concern about the possibility of having to evaluate whether an individual is appropriately boosted.

If the Board of Health wishes to amend the proposed regulation so that boosters are required if and when the CDC or the Health Officer believes that boosters are necessary to be “fully vaccinated”, the Board could follow the approach of the City of Chicago and adopt the following amendment:

Add a new subsection under section 5 to define “fully vaccinated”:

For purposes of this regulation, an individual is fully vaccinated if the individual meets the criteria of being fully vaccinated under the guidelines of the U.S. Centers for Disease Control and Prevention or the posted guidelines of the Health Officer, whichever criteria are the most restrictive.

Amend lines 87-99 as follows.

- c. Effective February 15, 2022 at 12:01 a.m., and except as provided under Section 3, patrons twelve (12) years old or older entering a covered establishment must provide proof of [having received one dose of the Johnson & Johnson COVID-19 vaccine or having received two doses of a COVID-19 vaccine authorized for emergency use or licensed for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization] being fully vaccinated.

⁶ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(21\)00273-5/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(21)00273-5/fulltext)

- d. Effective March 1, 2022 at 12:01 a.m., and except as provided under Section 3, patrons ages five (5) years-and-one-month old through eleven (11) years old entering a covered establishment must provide proof of [having received two doses of a COVID-19 vaccine authorized for emergency use or licensed for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization] being fully vaccinated.

3. Clarity Regarding Covered and Exempt Establishments; and Regarding Applicability to Municipal Buildings

Municipalities have contacted Council staff to request clarification regarding the applicability of the regulation to certain municipal buildings. A homeowners' association contacted staff regarding the applicability of the regulation to HOA community centers. In addition, staff believes that the applicability of the regulation to office buildings should be clarified.

To increase clarity along these lines, the Board of Health might wish to consider the following potential amendments.

Municipalities. In each instance in which the regulation references “County” buildings or facilities, add references to “municipal” buildings or facilities. For example, amend lines 38-43 as follows:

- f. Facilities owned or operated by the federal, state, [or] County, or municipal government where the public accesses governmental services, including services by the Department of Health and Human Services, licensing services, administrative hearings, judicial proceedings, law enforcement, public library services, legal services, housing and rental assistance, social services, and services by the Department of Motor Vehicles;

Community centers. Homeowners' associations have centers for their members that might or might not be considered “community centers” under the bill. The Board of Health might wish to seek input from the Health Officer, and to clarify the regulation’s language regarding community centers.

Office buildings. Like the District of Columbia order, the proposed regulation would exempt “Private meeting spaces in residences or office buildings”. It is unclear whether this would include a cafeteria within an office building (assuming that the cafeteria is sometimes used by guests to the facility) or meeting rooms that are within office buildings, but not used solely by employees at the building. The Board of Health might wish to amend the regulation to bring greater clarity to this issue. For example, the Board might consider the following amendment, which uses language similar to that of New York City and Philadelphia.

Amend line 37 as follows.

- e. [Private meeting spaces in residences or office buildings] Locations within a residential or office building, the use of which is limited to residents, guests, owners, or tenants of that building;

4. Implementation of Exemptions and Accommodations for Individuals

At the introduction of the pending resolution, some Councilmembers asked about the burden that the regulation would place upon businesses to implement medical or religious accommodations for patrons. In response, Dr. Stoddard noted that New York City has issued helpful guidance to businesses regarding medical or religious accommodations for unvaccinated patrons. See [COVID-19: Vaccine Key to NYC - NYC Health](#) and [Microsoft Word - Vax_GuidePublicAcomodations-English.docx \(nyc.gov\)](#).

In addition to considering New York's guidance, the Board of Health might wish to consider the approach of Philadelphia, which adopted the following language in its regulation. This language provides a greater level of guidance to businesses implementing the accommodations, and it also requires the health department to provide sample forms.

City of Philadelphia Language:

- (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.

5. Potential Inclusion of Employees

The cities of New York, Chicago, and Philadelphia have required the vaccination of workers at certain businesses, as a part of their vaccine "passport" orders. New York and Philadelphia require the phased-in vaccination of these employees, whereas Chicago requires that

the businesses follow OSHA requirements on vaccination and testing (regardless of the size of the business).

The benefit of including employees within the requirement would be to increase vaccination rates and reduce the spread of COVID. However, expanding the requirement to businesses would place new burdens upon them as employers, particularly if they have unionized employees. Notably, the County at this time does not require the vaccination of its employees, although a bill to require the vaccination of County employees is pending before the Council (Bill 34-21).

6. Clarification of Penalties and Good Faith Efforts

At the resolution's introduction, some Councilmembers asked about the potential liability of businesses who act in good faith to implement the regulation but cannot implement it perfectly. In response, Dr. Stoddard noted that enforcement is not focused upon businesses who try in good faith to meet the requirements.

The Board of Health might wish to consider including within the regulation a provision similar to that of Philadelphia. Philadelphia's regulation provides:

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...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 [for a medical or religious exemption] provided by [an individual] consistent with Section 4(B) of this Regulation....

In addition, the Board might wish to consider clarifying individuals' liability for providing fake documentation. Currently, the proposed regulation would provide that each instance of a covered establishment failing to check for proof of vaccination is a separate offense. The Board could add – similar to the City of Philadelphia – a provision stating that each instance of an individual providing a fake document is a separate offense:

After line 105, add:

- c. Each instance an individual submits false proof of vaccination constitutes a separate violation of this regulation.

7. Potential Termination Clause

During the introduction of the resolution, Councilmembers asked about the end goal of the proposed regulation. For example, is the goal to increase vaccination rates, and/or is the goal to lessen the spread of COVID within the County?

If the goal is vaccination, should a termination clause be added to the regulation that is linked to the prevalence of vaccination within the County? Alternatively, should hospitalization rates be used as a standard to determine when the order should be terminated? Or, like the County's indoor masking requirement, should the regulation terminate upon a date certain?

The orders and regulations of other jurisdictions reviewed by Council staff do not contain termination dates; those regulations and orders ultimately will need to be rescinded or amended by their adopting bodies or executives.

8. Effective Date; Phase-in Dates

As currently drafted, the regulation states that its requirements would begin on January 22, 2022. This date, and the subsequent phase-in dates, will need to be amended.

In addition, the Board might wish to consider whether to have one single effective date, at a reasonable time in the future. Chambers of commerce testified during the first worksession that the phase-in dates would be confusing for businesses to implement. The Maryland Hotel Lodging Association requested a minimum of a 30-day lead time to prepare for the regulation.

9. Potential Amendments Regarding Hotels

The Maryland Hotel Lodging Association has requested several amendments to the regulation, should the regulation be adopted. (© 98). Some of these requests (*e.g.*, signage templates) could be handled by the Department of Health and Human Services as it implements the regulation. Some of the requests would require amendments, including requests to:

- Exempt hotel guests simply checking into rooms;
- Exclude hotel common areas where food or beverages are not served;
- Permit acceptance of any World Health Organization-approved vaccine (because of international travelers);
- Exclude hotel gyms;
- Explicitly permit event planners to verify vaccination status in advance; and
- Require a “notice to cure” before penalties are imposed.

10. Additional Questions by Councilmembers

Councilmembers submitted questions in writing to Executive staff. © 32. The Executive staff’s responses are at © 34.

<u>This packet contains:</u>	<u>Circle #</u>
Proposed Resolution	1
Similar orders in other jurisdictions	
District of Columbia	7
New York City	13
Philadelphia	18
Chicago	28
Questions posed by Councilmembers to Executive Staff	32
Responses from Executive Staff	34
Public Testimony	
Mabilia Rastello	38

Michael Patrick	39
Tyler & Nicole Johansen	40
Michael Spencer	44
Aaron Droller	46
Chris Lee	53
Diana Patton	54
Erik Amick	55
Erik Gomez	56
Joe Gresock	57
John Hansman	58
Kevin Judge	59
Laura Griffiths	60
Rachel Flounlacker	62
Sharon S. Nanson	63
Robert McGrane	64
Theodore Kavadias	66
Dana Sklut	67
Amy Zimmerman	70
Yelena Gakh	71
Abby McClintock	72
John Eckhardt	73
Daniela D’Orazio	76
Peter D’Orazio	77
Jennifer Cashen	78
Tracey Butler	79
Lori McCarthy	81
Vivan Kuriakose	82
Karin Lee	83
Judith Rudolph	85
Jared Hautamaki	86
Barbara Zellers	87
Daniel Keegan	88
Amy Sklut	89
Greg Herbold	90
Marie Waldo	91
Ghina Saddiqi	92
Worksession Testimony	
Hispanic Chamber of Commerce	94
Greater Silver Spring Chamber	96
Maryland Hotel Lodging Association	98
Restaurant Association of Maryland	102
Greater Bethesda Chamber of Commerce	104

Resolution No.: _____

Introduced: January 11, 2022

Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE MONTGOMERY COUNTY BOARD OF HEALTH**

Lead Sponsor: Council President at the Request of the County Executive

SUBJECT: Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Recreation Centers, and Other Covered Establishments

Background

1. Lawrence J. Hogan, the Governor of the State of Maryland declared a state of emergency and catastrophic health emergency on March 5, 2020, to control and prevent the spread of SARS-CoV-2, a contagious disease, also known as COVID-19 within Maryland. The Governor’s declaration expired on August 15, 2021. Due to the rapid spread of the Omicron variant and associated strains on the healthcare system, the Governor issued a new declaration of a state of emergency and catastrophic health emergency effective January 4, 2022.
2. The COVID-19 pandemic threatens the health and welfare of Montgomery County residents, workers, and visitors and threatens to overwhelm the Montgomery County’s hospital capacity.
3. On November 26, 2021, the Centers for Disease Control and Prevention (“CDC”) classified Omicron as a “variant of concern.” In the past month, the daily case rate in the County has multiplied ninefold and is expected to rise further still.
4. The CDC has stated that vaccination is the most effective tool to mitigate the spread of COVID-19 and protect against severe illness. COVID-19 vaccines have proven to be safe and have remained highly effective in preventing severe illness, hospitalization, and death among vaccinated persons, even with the emergence and spread of the Delta and Omicron variants. Boosters are also increasingly proving to be important in protecting persons against the worst effects of COVID-19.
5. Vaccine requirements have resulted in more persons who were vaccine hesitant deciding to get vaccinated, thereby providing protection to themselves, those with whom they come in contact, and helping to maintain hospital capacity. Furthermore, subsequent increases in vaccine coverage help to reduce the amount of virus circulating in our community and protect those residents who remain at risk for severe disease despite getting vaccinated themselves, such as persons with immunosuppressive conditions or the elderly.
6. Indoor entertainment, recreation, dining, and fitness settings generally involve groups of unassociated people interacting for a substantial period of time and requiring vaccination

for all individuals in these areas will protect the public health, promote public safety, and reduce the risk to not just those vaccinated individuals but the public at large.

7. It is critically important that the County take immediate measures to mitigate the spread of COVID-19 and its health impacts to avoid further straining our health care facilities and hospitals and to avoid collateral health impacts on persons not suffering from COVID-19 but whose care is affected by the demands of COVID-19. Further, we must avoid overcrowding or any other deterrents to people seeking hospital and medical services, so that persons needing care do not delay care to the detriment of their own health.
8. In order to avoid closing non-essential businesses or re-imposing capacity limits, and to reduce the threat to human health caused by transmission of COVID-19, it is necessary and reasonable to require vaccinations at the types of establishments that residents frequent as it will incentivize vaccinations, thus increasing the County's vaccination rates.
9. The Montgomery County Executive, Marc Elrich, and the Acting Montgomery County Health Officer, James C. Bridgers, Jr., Ph.D., M.B.A., recommend that vaccinations be required at these types of establishments.
10. Pursuant to Md. Code Ann. Local Government §10-328(b) a county may provide for the prevention of contagious diseases in the county.
11. A local Board of Health may, pursuant to Md. Code Ann. Health Gen. §3-202(d), adopt and enforce rules and regulations on any cause of disease in the county. Pursuant to Montgomery County Code 2-65, the Montgomery County Council is and may act as the County Board of Health.
12. Rule 4(d) of the Council's Rules of Procedure provide that before the Board of Health adopts a regulation, the Council President must advertise a public hearing in a newspaper circulated throughout the County at least 15 days before the hearing and notify the governing body or chief executive officer of each municipality in the County at least 15 days before the hearing. Rule 4(d) allows the President to waive these notice provisions if a public health emergency requires immediate action. The Council President has waived these notice requirements because of the public health emergency caused by COVID-19.
13. The County Council, sitting as the Board of Health, finds after hearing the testimony and other evidence in the record of the public hearing that this public health regulation is necessary to protect the health of County residents.

Action

The County Council for Montgomery County, Maryland, sitting as the County Board of Health, finds that this is an emergency and approves the following regulation:

- 1 **1. Establishments Subject to Vaccination Entry Requirement.** The following
2 establishments and facilities (“covered establishments” or “covered establishments
3 and facilities”) must not permit a guest, visitor, or customer (“patron”) to enter the
4 indoor premises of the covered establishment or facility without displaying proof
5 of vaccination as required under Section 5 of this Order:
- 6 a. *Restaurants, bars, and nightclub establishments*, including restaurants and
7 taverns, coffee shops and fast-food establishments that have seating for
8 guests who choose to sit down to consume food or beverages, breweries,
9 wineries and distillery tasting rooms, mixed-use facilities, and food courts;
- 10 b. *Indoor entertainment establishments*, including nightclubs, pool and
11 billiard halls, bowling alleys, hookah and cigar bars, concert venues, live
12 entertainment and sporting venues, movie theatres, adult entertainment
13 venues, botanical gardens, museums and galleries, performing arts theaters,
14 arcades, indoor play areas, and other recreational game centers;
- 15 c. *Indoor exercise and recreational establishments*, including indoor portions
16 of standalone and hotel gyms and fitness centers, gyms and fitness centers
17 (including those in higher education institutions), yoga, Pilates, barre, and
18 dance studios, boxing/kickboxing gyms, fitness boot camps, public or
19 private indoor pools, County recreation centers, CrossFit or other
20 plyometric boxes, and other facilities used for conducting group fitness
21 classes;
- 22 d. *Indoor event and meeting establishments*, including hotel common rooms,
23 banquet halls, conference centers meeting facilities, convention centers,
24 exhibition halls, auditoriums; and
- 25 e. Any other indoor establishment designated by the Acting Health Officer or
26 the Health Officer’s designee, upon reasonable advance public notice.
- 27 **2. Establishments Not Subject to Vaccine Entry Requirement.** Except as specified
28 in paragraph 2.m., proof of vaccination is not required at the following
29 establishments or facilities:
- 30 a. Houses of worship;
- 31 b. Grocery stores, farmer’s markets, and food service establishments
32 providing charitable food services;

- 33 c. Pharmacies, medical offices, urgent care centers, or hospitals;
- 34 d. Big box stores, and other retail establishments where people tend to be in
- 35 motion and not standing or seated in close proximity to others for long
- 36 periods of time;
- 37 e. Private meeting spaces in residences or office buildings;
- 38 f. Facilities owned or operated by the federal, state, or County government
- 39 where the public accesses governmental services, including services by the
- 40 Department of Health and Human Services, licensing services,
- 41 administrative hearings, judicial proceedings, law enforcement, public
- 42 library services, legal services, housing and rental assistance, social
- 43 services, and services by the Department of Motor Vehicles;
- 44 g. Facilities relating to essential human services such as warming and cooling
- 45 centers, day service facilities for homeless persons, shelters serving
- 46 homeless persons or victims of domestic violence;
- 47 h. Polling places during elections;
- 48 i. Pre-kindergarten through grade twelve (12) public and non-public schools;
- 49 j. Child-care programs;
- 50 k. Senior centers and community centers; and
- 51 l. Such other facilities as exempted by the County's Health Officer or the
- 52 Health Officer's designee, upon reasonable advance public notice; or as
- 53 otherwise indicated by this Order.
- 54 m. If an exempt facility conducts a non-exempt activity, the vaccine
- 55 requirement must apply. (For example, if a house of worship is rented for
- 56 a non-religious purpose, the vaccine requirement applies. If a retail
- 57 bookstore hosts a seated event, proof of vaccination must be required to
- 58 enter the area where people will be closely congregated for a prolonged
- 59 time.)
- 60 **3. Individuals Exempt from Vaccination Entry Requirement.** The proof of
- 61 vaccination requirement under this Order does not apply to the following
- 62 individuals:
- 63 a. Individuals entering a covered establishment for a quick and limited
- 64 purpose (for example, placing an order for takeout, picking up an order, or

65 making a delivery); or

66 b. A person entitled by law to a reasonable accommodation due to a medical
67 condition or a sincerely held religious belief.

68 **4. Signage Requirement.** Covered facilities must post signage prominently at their
69 entrances notifying the public of the vaccination entry requirement under this
70 Order.

71 **5. Accepted Proof of Vaccination and Phased-In Effective Dates.**

72 a. Effective January 21, 2022 at 12:01 a.m., and except as provided under
73 Section 3, patrons entering a covered establishment must provide proof of
74 receipt of at least one dose of a COVID-19 vaccine authorized for
75 emergency use or licensed for use by the U.S. Food and Drug
76 Administration or authorized for emergency use by the World Health
77 Organization.

78 b. Proof of vaccination may be established by:

79 i. A CDC COVID-19 Vaccination Record Card or an official
80 immunization record from the jurisdiction, state, or country where
81 the vaccine was administered or a digital or physical photo of such
82 a card or record, reflecting the person's name, vaccine brand, and
83 date administered; or

84 ii. A Certificate from [Maryland MyIR](#) or a digital or physical photo of
85 the certificate, reflecting the person's name, vaccine brand, and date
86 administered.

87 c. Effective February 15, 2022 at 12:01 a.m., and except as provided under
88 Section 3, patrons twelve (12) years old or older entering a covered
89 establishment must provide proof of having received one dose of the
90 Johnson & Johnson COVID-19 vaccine or having received two doses of a
91 COVID-19 vaccine authorized for emergency use or licensed for use by the
92 U.S. Food and Drug Administration or authorized for emergency use by the
93 World Health Organization.

94 d. Effective March 1, 2022 at 12:01 a.m., and except as provided under Section
95 3, patrons ages five (5) years-and-one-month old through eleven (11) years
96 old entering a covered establishment must provide proof of having received

97 two doses of a COVID-19 vaccine authorized for emergency use or licensed
98 for use by the U.S. Food and Drug Administration or authorized for
99 emergency use by the World Health Organization.

100 **6. Enforcement.**

101 a. This Order must be enforced by any County department or agency that has
102 authority over the subject matter of any particular provision and the
103 Montgomery County Police Department.

104 b. Each instance that a covered entity fails to check an individual’s vaccination
105 status shall constitute a separate violation of this Order.

106 **7. Applicability.** This regulation applies Countywide.

107 **8. Severability.** If the application of this regulation or any part of it to any facts or
108 circumstances is held invalid, the rest of the regulation and its application to all
109 other facts and circumstances is intended to remain in effect.

110 **9. Effective Date.** This regulation takes effect on January 21, 2022, at 12:01 a.m.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2021-148
December 22, 2021

SUBJECT: Vaccination Requirement for Entrance into Certain Indoor Establishments and Facilities

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code §§ 7-2304 and 7-2304.01 (2018 Repl.); and section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.* (2018 Repl.); and in accordance with the Foreclosure Moratorium Extension, Scheduled Eviction Assistance, and Public Emergency Extension Emergency Declaration Resolution of 2021, R 24-0337, effective December 21, 2021, and any subsequently-enacted authorizations to extend the public emergency, it is hereby **ORDERED** that:

I. BACKGROUND

1. The COVID-19 pandemic, including the exponential spread of its Omicron variant, threatens the health and welfare of District residents, workers, and visitors and threatens to overwhelm our hospital capacity.
2. More than 21 months after the World Health Organization declared a pandemic and the Secretary of the U.S. Department of Health and Human Services and the Mayor of the District of Columbia declared a public health emergency for the 2019 novel coronavirus, more than 51.4 million persons in the United States have been diagnosed with COVID-19 and more than 807,146 have died from the disease. Locally, transmission stands at a seven-day average of 123.8 new daily cases per 100,000 persons; total infections in the District have risen to 76,137; and tragically, 1,207 District residents have lost their lives due to COVID-19.
3. On November 26, 2021, the Centers for Disease Control and Prevention (CDC) classified Omicron as a Variant of Concern. Since then, the variant has been detected in the District. In the past month, the daily case rate in the District has multiplied ninefold and is expected to rise further still. More than 1,000 Washingtonians per day are now contracting COVID-19, and it is uncertain how many of them will experience symptoms of “long COVID”.

4. The COVID-19 vaccines that are authorized for use have proven to be safe and have remained highly effective in preventing severe illness, hospitalization, and death among vaccinated persons, even with the emergence and spread of the Delta and Omicron variants. Boosters are increasingly proving to be important in protecting persons against the worst effects of COVID-19.
5. Nearly 100% of COVID-19 related hospitalizations in the District in the past week occurred in unvaccinated persons, and the percent of hospitalized persons with COVID-19 since January 2021 who were fully vaccinated stands at 2.8%. Death due to COVID-19 in fully vaccinated persons remains a rare event.
6. In the District, the virus is spreading most rapidly among those aged 25-34, and 80% of recent cases are among residents under the age of 44. This population also tends to go out most to venues such as restaurants and taverns, nightclubs, concert and sporting venues. Vaccine coverage is also lower among residents under the age of 40 compared to older age groups.
7. Vaccine requirements have resulted in more persons who were vaccine hesitant deciding to get vaccinated, thereby providing protection to themselves, those with whom they come in contact, and helping to maintain hospital capacity. Furthermore, subsequent increases in vaccine coverage help to reduce the amount of virus circulating in our community and protect those residents who remain at risk for severe disease despite getting vaccinated themselves, such as persons with immunosuppressive conditions or the elderly.
8. It is critically important that the District take immediate measures to mitigate the spread of COVID-19 and its health impacts to avoid further straining our health care facilities and hospitals and to avoid collateral health impacts on persons not suffering from COVID-19 but whose care is affected by COVID-19. Further, we must avoid overcrowding or any other deterrents to people seeking hospital and medical services, so that persons needing care do not delay care to the detriment of their own health.
9. In order to avoid resorting to the more drastic remedy of closing non-essential businesses or re-imposing capacity limits, we must implement a vaccine requirement to preserve life, health, and hospital capacity, and to help ensure continuity of operations of government and business operations by preventing the long absences that ensue when a person contracts a severe case of COVID-19.
10. Therefore, this Mayor's Order requires certain public venues to implement a vaccination entry requirement for guests, visitors, and customers by January 15, 2022, in conformity with guidance to be issued by December 30, 2021 and as specified below.

II. VACCINATION ENTRY REQUIREMENT FOR CERTAIN ESTABLISHMENTS AND FACILITIES

1. Establishments Subject to Vaccination Entry Requirement

Starting on January 15, 2022, the following establishments and facilities (the "covered establishments and facilities") shall not permit a guest, visitor, or customer over twelve (12) years old to enter their indoor premises without displaying proof of vaccination against COVID-19:

- a. **Restaurants, bars and nightclub establishments**, including restaurants and taverns, coffee shops and fast-food establishments that have seating if guests choose to sit down; breweries, wineries and distillery tasting rooms; mixed-use facilities; food courts;
- b. **Indoor entertainment establishments**, including nightclubs, hookah bars, pool and billiard halls, and cigar bars; concert, live entertainment and sporting venues; movie theatres; adult entertainment venues; bowling alleys;
- c. **Indoor exercise and recreational establishments**, including exercise facilities, dance, yoga and pilates studios; any facilities used for group fitness classes;
- d. **Indoor event and meeting establishments**, including hotel common rooms, banquet halls, conference centers meeting facilities, convention centers, auditoriums; shared work facilities;
- e. Any other indoor establishment designated by the Director of the Department of Health.

2. Establishments Not Subject to Vaccine Entry Requirement

Except as specified in paragraph II.2.k, this proof of vaccine requirement imposed by paragraph II.1. does not apply to the following establishments or facilities:

- a. Houses of worship;
- b. Grocery stores, farmer's markets, and food service establishments providing charitable food services;
- c. Pharmacies, medical offices, urgent care centers, or hospitals;
- d. Big box stores and retail establishments where people tend to be in motion and not standing or seated in close proximity to others for long periods of time;

- e. Private meeting spaces in residences or office buildings;
- f. Facilities relating to governmental regulation, licensing, administrative hearings, judicial proceedings, law enforcement, the provision of legal services, and the Department of Motor Vehicles;
- g. Facilities relating to essential human services such as warming and cooling centers, day service facilities for homeless persons, shelters serving homeless persons or victims of domestic violence;
- h. Polling places during elections;
- i. Such other facilities as exempted by the Department of Health.
- j. If an exempt facility under Section II.3 conducts a non-exempt activity, the vaccine requirement shall apply. For example, if a house of worship is rented for a non-religious purpose, the vaccine requirement applies. If a retail bookstore hosts a seated event, proof of vaccination shall be required to enter the area where people will be closely congregated for a prolonged time.

3. **Individuals Exempt from Vaccination Entry Requirement**

The proof of vaccination requirement imposed by Section II.1. of this Order does not apply to the following individuals:

- a. Individuals entering a covered establishment for a quick and limited purpose (for example, placing an order for takeout, picking up an order, or making a delivery); or
- b. A person entitled by law to a reasonable accommodation due to a medical condition or a sincerely held religious belief.

4. **Signage Requirement**

Covered facilities shall prominently post signage at their entrances notifying the public of the vaccination entry requirement.

5. **Timing**

Covered facilities shall post signs and verify that entrants aged twelve (12) years and older has had a first vaccination by Sunday, January 15, 2022. Proof of having had a full initial course of vaccination will be required effective Tuesday, February 15, 2022. On those dates, the requirements take effect at 6:00 a.m.

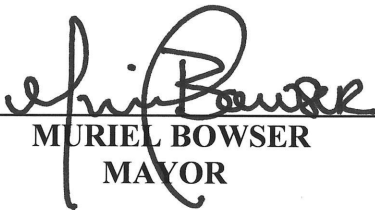
III. DELEGATION OF AUTHORITY

1. The Director of the Department of Health shall further specify the applicability of this Order and any reasonable accommodations that may be necessary including when a recent negative test may substitute for vaccination; the requirements for vaccination and any further phasing in of requirements for second shots or boosters; grace periods for children who recently turned twelve years old; acceptable proof of vaccination; signage requirements and where within a facility proof of vaccination must be verified.
2. The Deputy Mayor for Planning and Economic Development, in conjunction with the Department of Health, shall further outline a plan to help businesses understand, publicize, and enforce the vaccination requirements of this Order and provide for reporting complaints and violations;
3. The City Administrator or his designee shall be responsible for implementation and any necessary modification of the Order as it applies or does not apply to District government facilities;
4. Businesses and other entities may exclude persons and take appropriate employment actions against their employees who endanger themselves or others by being in violation of this Order or acting in violation of it, or in violation of a rule, order, or other issuance issued under the authority of this Order, other Mayor's Orders, or City Administrator's Orders relating to mitigating the spread of COVID-19 consistent with District and federal law.
5. All District government agencies that issue licenses, permits, certificates, endorsements, or other authorizations, including the Department of Consumer and Regulatory Affairs, the District Department of Transportation, the Alcoholic Beverage Regulation Administration, the Office of the State Superintendent of Education, the Department of For-Hire Vehicles, and the Department of Health may issue rules consistent with or take enforcement action directly under this Order or a rule, order, or other issuance issued under the authority of this Order to provide for the revocation, suspension, or limitation of a license, permit, certificate, endorsement, or other authorization of a person or entity that violates this Order.
6. Any individual or entity that knowingly violates this Order, or a rule, order, or other issuance issued under the authority of this Order, may be subject to civil and administrative penalties authorized by law, including sanctions or penalties for


violating section 8 of the District of Columbia Public Emergency Act of 1980, D.C. Official Code § 7-2307, which can result in civil fines of not more than \$1,000 or summary suspension or revocation of licenses.

IV. EFFECTIVE DATE AND DURATION

The first phase of implementation of this Order shall begin by January 15, 2022 at 6:00 a.m., and shall remain in effect until repealed, amended, or superseded.



MURIEL BOWSER
MAYOR

ATTEST: 

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 225

August 16, 2021

**KEY TO NYC: REQUIRING COVID-19 VACCINATION FOR
INDOOR ENTERTAINMENT, RECREATION, DINING AND FITNESS SETTINGS**

WHEREAS, the COVID-19 pandemic has severely impacted New York City and its economy, and is addressed effectively only by joint action of the City, State, and Federal governments;

WHEREAS, the state of emergency to address the threat and impacts of COVID-19 in the City of New York first declared in Emergency Executive Order No. 98, and extended most recently by Emergency Executive Order No. 220, remains in effect;

WHEREAS, this Order is necessary because of the propensity of the virus to spread person-to-person, and also because the actions taken to prevent such spread have led to property loss and damage;

WHEREAS, the U.S. Centers for Disease Control (“CDC”) reports that new variants of COVID-19, classified as “variants of concern,” are present in the United States;

WHEREAS, some of these new variants currently account for the majority of COVID-19 cases sequenced in New York City and are much more transmissible than earlier variants;

WHEREAS, the CDC has stated that vaccination is the most effective tool to mitigate the spread of COVID-19 and protect against severe illness;

WHEREAS, the CDC has also stated that vaccination benefits both vaccine recipients and those with whom they come into contact, including individuals who are ineligible for the vaccine due to age, health or other conditions;

WHEREAS, the recent appearance in the City of the highly transmissible Delta variant of COVID-19 has substantially increased the risk of infection;

WHEREAS, indoor entertainment, recreation, dining and fitness settings generally involve groups of unassociated people interacting for a substantial period of time and requiring vaccination for all individuals in these areas, including workers, will protect the public health, promote public safety, and save the lives of not just those vaccinated individuals but the public at large;

WHEREAS, 56% of City residents are fully vaccinated and 62% of residents have received at least one dose, and mandating vaccinations at the types of establishments that residents frequent will incentivize vaccinations, increasing the City's vaccination rates and saving lives; and

WHEREAS, a study by Yale University demonstrated that the City's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the City believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby order that a covered entity shall not permit a patron, full- or part-time employee, intern, volunteer, or contractor to enter a covered premises without displaying proof of vaccination and identification bearing the same identifying information as the proof of vaccination.

§ 2. I hereby order that the following individuals are exempted from this Order, and therefore may enter a covered premises without displaying proof of vaccination, provided that such individuals wear a face mask at all times they are unable to maintain six (6) feet of distance from other individuals inside the covered premises:

- a. Individuals entering for a quick and limited purpose (for example, using the restroom, placing or picking up an order or service, changing clothes in a locker room, or performing necessary repairs);
- b. A nonresident performing artist not regularly employed by the covered entity while they are in a covered premises for purposes of performing;
- c. A nonresident professional athlete/sports team who enters a covered premises as part of their regular employment for purposes of competing; and
- d. A nonresident individual accompanying a performing artist or professional athlete/sports team into a covered premises as part of their regular employment so long as the performing artist or professional athlete/sports team are performing or competing in the covered premises.

§ 3. I hereby direct each covered entity to develop and keep a written record describing the covered entity's protocol for implementing and enforcing the requirements of this Order. Such written record shall be available for inspection upon a request of a City official as allowed by law.

§ 4. I hereby direct each covered entity to post a sign in a conspicuous place that is viewable by prospective patrons prior to entering the establishment. The sign must alert patrons to the vaccination requirement in this Order and inform them that employees and patrons are required to be vaccinated. The Department for Health and Mental Hygiene ("DOHMH") shall determine the text of such sign and provide a template on its website that a covered entity may use. A covered entity may use the sign available online at nyc.gov/keytoNYC, or use its own sign provided its sign must be no smaller than 8.5 inches by 11 inches, with text provided by DOHMH in at least 14-point font.

§ 5. For the purposes of this Order:

a. "Contractor" means the owner and/or employees of any business that a covered entity has hired to perform work within a covered premise, except that it shall not include nonresident owners and/or employees.

b. "Covered entity" means any entity that operates one or more covered premises, except that it shall not include pre-kindergarten through grade twelve (12) public and non-public schools and programs, child care programs, senior centers, community centers, or as otherwise indicated by this Order.

c. "Covered premises" means any location, except a location in a residential or office building the use of which is limited to residents, owners, or tenants of that building, that is used for the following purposes:

(i) **Indoor Entertainment and Recreational Settings**, including indoor portions of the following locations, regardless of the activity at such locations: movie theaters, music or concert venues, adult entertainment, casinos, botanical gardens, commercial event and party venues, museums and galleries, aquariums, zoos, professional sports arenas and indoor stadiums, convention centers and exhibition halls, performing arts theaters, bowling alleys, arcades, indoor play areas, pool and billiard halls, and other recreational game centers;

(ii) **Indoor Food Services**, including indoor portions of food service establishments offering food and drink, including all indoor dining areas of food service establishments that receive letter grades as described in section 81.51 of the Health Code; businesses operating indoor seating areas of food courts; catering food service establishments that provide food indoors on its premises; and any indoor portions of food service establishment that is regulated by the New York State Department of Agriculture and Markets offering food for on-premises indoor consumption. The requirements of this Order shall not apply to any food service establishment offering food and/or

drink exclusively for off-premises or outdoor consumption, or to a food service establishment providing charitable food services such as soup kitchens;

(iii) **Indoor Gyms and Fitness Settings**, including indoor portions of standalone and hotel gyms and fitness centers, gyms and fitness centers in higher education institutions, yoga/Pilates/barre/dance studios, boxing/kickboxing gyms, fitness boot camps, indoor pools, CrossFit or other plyometric boxes, and other facilities used for conducting group fitness classes.

d. “Indoor portion” means any part of a covered premises with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an indoor portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a plastic dome, if it has adequate ventilation to allow for air circulation.

e. “Nonresident” means any individual who is not a resident of New York City.

f. “Patron” means any individual 12 years of age or older who patronizes, enters, attends an event, or purchases goods or services within a covered premise.

g. “Identification” means an official document bearing the name of the individual and a photo or date of birth. Examples of acceptable identification include but are not limited to: driver’s license, non-driver government ID card, IDNYC, passport, and school ID card.

h. “Proof of vaccination” means proof of receipt of at least one dose of a COVID-19 vaccine authorized for emergency use or licensed for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization. Such proof may be established by:

i. A CDC COVID-19 Vaccination Record Card or an official immunization record from the jurisdiction, state, or country where the vaccine was administered or a digital or physical photo of such a card or record, reflecting the person’s name, vaccine brand, and date administered; or

ii. A New York City COVID Safe Pass (available to download on Apple and Android smartphone devices); or

iii. A New York State Excelsior Pass.

§ 6. I hereby direct that each instance that a covered entity fails to check an individual’s vaccination status shall constitute a separate violation of this Order.

§ 7. I hereby direct the City's Commission on Human Rights to develop guidance to assist covered entities in complying with this Order in an equitable manner consistent with applicable provisions of the New York City Human Rights Law.

§ 8. I hereby direct, in accordance with Executive Law § 25, that staff from any agency as may hereafter be designated by the DOHMH Commissioner shall enforce the directives set forth in this Order.

§ 9. I hereby direct that any person or entity who is determined to have violated this Order shall be subject to a fine, penalty and forfeiture of not less than \$1,000. If the person or entity is determined to have committed a subsequent violation of this Order within twelve months of the initial violation for which a penalty was assessed, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$2,000. For every violation thereafter, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$5,000 if the person or entity committed the violation within twelve months of the violation for which the second penalty was assessed. This Order may be enforced pursuant to sections 3.05, 3.07, and/or 3.11 of the Health Code and sections 558 and 562 of the Charter. I hereby suspend Appendix 7-A of Chapter 7 of the Rules of the City of New York to the extent it would limit a violation of this Order to be punished with a standard penalty of \$1,000 or a default penalty of \$2,000.

§ 10. Covered entities shall comply with further guidelines issued by DOHMH to further the intent of this Order and increase the number of vaccinated individuals in the City.

§ 11. This Emergency Executive Order shall take effect on August 17, 2021, except for section 9 of this Order, which shall take effect on September 13, 2021.



Bill de Blasio,
MAYOR



**EMERGENCY REGULATION
GOVERNING THE CONTROL AND PREVENTION OF COVID-19
MANDATING VACCINES FOR INDIVIDUALS WORKING AND DINING AT
INDOOR DINING LOCATIONS**

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 an individual within twenty-four (24) hours of the date of entrance to the Indoor Dining Location in lieu of requiring an individual 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.

ORDER OF THE COMMISSIONER OF HEALTH OF THE CITY OF CHICAGO

No. 2021-2

(Proof of Vaccination in Public Places)

Effective: January 3, 2022

WHEREAS, In Executive Order No. 2021-32 (COVID-19 Executive Order No. 96), filed on December 10, 2021, the Governor of Illinois affirmed that a local government body may enact provisions that are stricter than those in the Executive Order; and

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

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

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

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

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

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

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

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

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

"Covered Location" means the following:

1. Establishments where food or beverages are served, including but not limited to restaurants, bars, fast food establishments, coffee shops, tasting rooms, cafeterias, food courts, dining areas of grocery stores, breweries, wineries, distilleries, banquet halls, and hotel ballrooms; and
2. Gyms and fitness venues, including but not limited to gyms, recreation facilities, fitness centers, yoga, pilates, cycling, barre, and dance studios, hotel gyms, boxing and kickboxing gyms, fitness boot camps, and other facilities used for conducting indoor group fitness classes; and
3. Entertainment and recreation venues in areas where food or beverages are served, including but not limited to movie theaters, music and concert venues, live performance venues, adult entertainment venues, commercial event and party venues, sports arenas, performing arts theaters, bowling alleys, arcades, card rooms, family entertainment centers, play areas, pool and billiard halls, and other recreational game centers.
4. "Covered locations" do not include houses of worship, K-12 schools, locations in O'Hare International Airport or Midway International Airport, locations in residential or office buildings the use of which is limited to residents, owners, or tenants of that building, or to food service establishments providing only charitable food services, such as soup kitchens.

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

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

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

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

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

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

Such proof may be established by:

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

SECTION 2. Notwithstanding any other provision of law, a covered entity shall not permit any patron to enter the indoor portion of a covered location without displaying proof of full vaccination. Additionally, any individual over the age of 16 shall provide identification bearing the same identifying information as the proof of full vaccination. A covered entity may in the interests of efficiency allow patrons to provide the requisite proof prior to entry, either directly to the covered entity or through an intermediary such as an event planner.

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

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

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

1. Individuals entering a covered location for less than 10 minutes for the purpose of ordering and carrying out food, making a delivery, or using the bathroom;
2. A nonresident performing artist who does not regularly perform or render services in a covered location, or a nonresident individual accompanying such a performing artist, while the performing artist or individual is in a covered location for the purposes of such artist's performance;
3. A nonresident professional athlete, or a nonresident individual accompanying such professional athlete, who enters a covered location as part of their regular employment for purposes of the professional athlete/sports team competition;
4. Individuals who have previously received a medical or religious exemption, provided such patrons provide the covered entity proof of the medical or religious exemption and a COVID-19 test administered by a medical professional within the last 72 hours prior to entering a covered location.
5. An individual 18 years of age or younger who enters a covered location to participate in an activity organized by a school or after-school program offered by any pre-kindergarten through grade twelve public or non-public school; and
6. An individual who enters for the purposes of voting in a municipal, state, or federal election; or, pursuant to law, assisting or accompanying a voter or observing such election.

SECTION 6. All covered entities shall comply with OSHA standards 1910.501(e) & (g) relating to employee vaccination status and testing, regardless of the number of their employees.

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

SECTION 8. In addition to any other penalty provided by law, any covered entity who violates this Order shall be subject to arrest, and to the fines set forth in Section 2-112-340 of the Code. Further, any covered entity that fails to enforce this Order shall be subject to

sanctions, including, but not limited to, closure pursuant to Sections 2-112-050 and 2-112-170 of the Code.

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

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

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



Allison Arwady, M.D.,

Commissioner of Health of the City of Chicago

Issued: December 21, 2021

**Questions for Executive Branch on Proposed Vaccine Passport
(1/4/22)**

1. Why are workers/employees not included under the regulation? Do other jurisdictions have passport regulations that include workers? How are residents safe in a situation where fellow patrons must be vaccinated but the employees serving them and with whom they actually interact may not be vaccinated?
2. How does this requirement apply to individuals entering government buildings? There is an exemption for private meeting spaces and for facilities “relating to governmental regulation”. Does this mean that all County building and facilities are exempt (EOB, COB, Libraries, Rec Centers, Senior Centers, etc.)?
3. If government buildings are exempt, why are we imposing a greater requirement on businesses than we’re imposing on ourselves?
4. How are businesses going to administer individuals’ exemption requests for sincerely held religious beliefs or medical necessity? Is failing to grant an exemption that should be granted considered a violation of the regulation? Will businesses be subject to discrimination claims for failing to grant needed exemptions?
5. What happens if someone loses their vaccine card?
6. What if any outreach has been done with businesses, business groups, nonprofits, arts and entertainment venues?
7. Was this vaccine passport proposed by the Health Officer and Public Health Team or by the County Executive?
8. Is there specific evidence that the Executive Branch can point to that demonstrates how vaccine passports implemented in other, similar jurisdictions have reduced the spread of Covid 19 and/or increased the number of residents getting vaccinated?
9. What specific public health metrics and guidance were used to determine whether to include certain business and activities and exclude others?
10. At this stage of the pandemic and in light of all we know with the current variant, is the requirement of a first dose in what is now generally seen as a 3-dose vaccine sufficient enough to have a meaningful impact?
11. In light of the percentage of County residents 12+ who have already received a 1st dose, what impact would a vaccine passport requirement that only requires one dose and only includes those 12 and over actually have?

12. What enforcement tools does the Executive Branch intend to deploy in order to implement this, especially in light of all the staff shortages throughout county government and the broader workforce?
13. What if any technology will the County be deploying to implement this requirement and how will businesses and residents access it?
14. What coordination, if any, is happening with DC government to make it easy for residents and patrons to move back and forth between jurisdictions? Will the two systems operate in separate silos?
15. Has there been a cost/benefit analysis done to determine how much this will cost in county dollars to implement and enforce and to private entities to carry out versus the real-life public health benefits? What financial resources does the County plan to provide impacted businesses and nonprofit organizations to support this initiative and how is it proposed to be funded? How many FTEs do you estimate to administer the passport program and what departments will provide staffing? Will you be contracting out any of this work?
16. How long does the Executive Branch recommend that this passport requirement remain in place, what are its specific objectives, and what metrics will be used to determine its effectiveness?



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

Richard S. Madaleno
Chief Administrative Officer

Executive Branch's Response to County Council Vaccine Requirement Regulation Questions

- 1. Why are workers/employees not included under the regulation? Do other jurisdictions have passport regulations that include workers? How are residents safe in a situation where fellow patrons must be vaccinated but the employees serving them, and with whom they actually interact, may not be vaccinated?**

DC and Chicago don't require employees to be vaccinated. NYC, Boston, Honolulu, LA, and Philadelphia require employees to be vaccinated. There was great concern among the business sector that if Montgomery County requires employees to be vaccinated then it could exacerbate staffing shortages because DC does not require employees to be vaccinated.

- 2. How does this requirement apply to individuals entering government buildings? There is an exemption for private meeting spaces and for facilities "relating to governmental regulation". Does this mean that all County buildings and facilities are exempt (EOB, COB, Libraries, Rec Centers, Senior Centers, etc.)?**

The public has a constitutional right to petition government and access certain critical services. With that said, as drafted this would not apply to EOB, COB, Senior Centers, Shelters, DHHS clinics, rental assistance, permitting and licensing, etc.

- 3. If government buildings are exempt, why are we imposing a greater requirement on businesses than we're imposing on ourselves?**

The public has a constitutional right to petition government and access certain critical services.

- 4. How are businesses going to administer individuals' exemption requests for sincerely held religious beliefs or medical necessity? Is failing to grant an exemption that should be granted, considered a violation of the regulation? Will businesses be subject to discrimination claims for failing to grant needed exemptions?**

Businesses should apply the same process currently used when patrons seek exception to the face covering requirement.

To briefly describe this process - If a patron indicates that they are exempt, businesses should engage in a good faith discussion (a.k.a. the “interactive process”) to determine if there is a reasonable accommodation that would enable the patron to access the goods and services without posing an undue hardship to the business or a direct threat to other persons inside the business. Whether to grant the accommodation would be in the sole discretion of the business.

Failure to grant would not be a violation of this regulation.

5. What happens if someone loses their vaccine card?

They can provide a copy of their vaccination card, picture of their vaccination card, if an individual is vaccinated in the State of Maryland; they can obtain proof of vaccination from MyIR which permits downloading or printing of proof of vaccination. If they were vaccinated out-of-state, they can contact their original provider/State for a replacement card.

6. What if any outreach has been done with businesses, business groups, nonprofits, arts and entertainment venues?

Outreach started in August 2021, with a Town Hall on this topic. Conversations continued before and after introduction of the bill, with the Restaurant Association, Chambers of Commerce, business leaders and others.

7. Was this vaccine passport proposed by the Health Officer and Public Health Team or by the County Executive?

The Public Health Team worked with the Public Health Advisory Committee on this initiative and brought it to the County Executive.

8. Is there specific evidence that the Executive Branch can point to, that demonstrates how vaccine passports implemented in other, similar jurisdictions have reduced the spread of Covid 19 and/or increased the number of residents getting vaccinated?

As noted in the Council’s Resolution packet prepared by staff – NYC experienced a vaccine rate increase of 9% overall and 13% in ages 18-34.

Additionally, a CDC report from November shows the benefits of vaccination status in reducing spread, symptoms, and risk of death.

The [linked](#) Lancet Journal article shows how vaccine requirements resulted in increased vaccination rates.

9. What specific public health metrics and guidance were used to determine whether to include certain business and activities and exclude others?

Establishments included those that meet a series of criteria that placed them at the top of the Contact Tracing data provided by the Maryland COVID link system.

Typically, environments where face coverings must be removed or frequently become askew during activities.

10. At this stage of the pandemic and in light of all we know with the current variant, is the requirement of a first dose in what is now generally seen as a 3-dose vaccine sufficient enough to have a meaningful impact?

The benefits of any level of vaccine dosing are beneficial, particularly against Omicron. The draft proposal is structured to be similar to DC's requirement. Given the high rate of vaccination in the County, starting with a two dose requirement might be reasonable.

11. In light of the percentage of County residents 12+ who have already received a 1st dose, what impact would a vaccine passport requirement that only requires one dose and only includes those 12 and over actually have?

Same answer as above--The benefits of any level of vaccine dosing are beneficial, particularly against Omicron. The draft proposal is structured to be similar to DC's requirement. Given the high rate of vaccination in the County, starting with a two dose requirement might be reasonable.

12. What enforcement tools does the Executive Branch intend to deploy in order to implement this, especially in light of all the staff shortages throughout county government and the broader workforce?

We anticipate a similar enforcement mechanism used for enforcement of the indoor face covering requirement. This is largely a complaint-based enforcement through DHHS' Licensing and Regulation Services. We will continue to provide education to business owners and patrons of the efficacy of vaccines and why the regulation is in effect.

13. What if any technology will the County be deploying to implement this requirement and how will businesses and residents access it?

There is no technology requirement. There will not be any technology unless MDH changes its position on software systems accessing the Immunet database.

14. What coordination, if any, is happening with DC government to make it easy for residents and patrons to move back and forth between jurisdictions? Will the two systems operate in separate silos?

As drafted, the resolution closely mirrors DC's vaccine requirements.

Ongoing Conversations occur with D.C. Dept. of Health about implementation to inform our policies and procedures.

Consistency with DC's program will reduce confusion for residents, visitors, and businesses.

15. Has there been a cost/benefit analysis done to determine how much this will cost in county dollars to implement and enforce, and to private entities to carry out, versus the real-life public health benefits? What financial resources does the County plan to provide impacted businesses and nonprofit organizations to support this initiative, and how is it proposed to be funded? How many FTEs do you estimate to administer the passport program and what departments will provide staffing? Will you be contracting out any of this work?

No formal cost/benefit analysis was done on this proposal. But reports from other jurisdictions that implemented similar programs were reviewed to identify potential financial impacts.

We know that the cost of unfettered COVID spread in the community is significant. The potential impact of additional requirements (e.g. capacity limits, outdoor dining only, etc.) on business is also significant.

Existing County resources will be used for enforcement and is part of the routine inspection process.

Many COVID related enforcement requirements are reimbursed by Federal funds. E.g. signage for enforcement of this proposal is anticipated to be reimbursed.

16. How long does the Executive Branch recommend that this passport requirement remain in place, what are its specific objectives, and what metrics will be used to determine its effectiveness?

This program is intended to curb the spread of COVID that is less deleterious than previous measures. The key to living with COVID-19 is increasing vaccination and booster rates. We believe this proposed regulation helps toward meeting those objectives.

Therefore, metrics around this regulation should be based upon the above goals.

Some metrics to consider are transmission and vaccination rates. A reevaluation period like the indoor face covering regulation is also suggested.

My name is Mabilia Rastello and I am a resident of the Twinbrook community. I am writing to ask you to please vote against the vaccine passport proposal.

I am in favor of promoting public safety; and as I read about our county's high vaccination rate, high testing rate, and the initiative of many private businesses that have already instituted vaccine requirements for their establishments, I find the proposal for a vaccine passport to be superfluous and divisive. People who live in and visit Montgomery County already have the ability to eat, work, and play at localities that serve only vaccinated persons. People who live and work in Montgomery County have had and continue to have the ability to be vaccinated. If businesses are forced to serve only those who are vaccinated, how may this negatively impact business owners whose customer base is not exclusively vaccinated? What recourse will be provided to businesses who may be negatively impacted by this proposal? Is there a way the proposal could be revised to incentivize businesses to require proof of vaccination without making it obligatory and punitive for the business?

Could this proposal put businesses or the County at risk of increased litigation because the County is proposing to require patrons to have a vaccine that has not yet received full licensure by the FDA and as such is (per the FDA's guidelines) for voluntary use only?

I ask you again to please vote against this unnecessary vaccine passport proposal.

I oppose the Board of Health Regulation to “prevent” the spread of COVID-19 in the County by imposing Vaccine “Requirements” to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments.

No jurisdiction that has implemented a similar set of “requirements” has “prevented” the spread of COVID-19. Your proposal touts the “success” New York City’s “Key to NYC” vaccine passport. After 5 months of “successful” operation, New York City has its highest transmission rate at any point in the pandemic, and a rate of transmission that is over 2x what we are currently experiencing in Montgomery County. Clearly, the spread of COVID-19 has not been “prevented”.

This becomes evident in your proposal’s refusal to indicate what a “success” measure would be. If this passive-aggressive attempt to increase the county’s vaccination rate results in the spread of COVID-19 being prevented, there should be a defined goal that triggers a “Phase-Out” period. Alternatively, when it becomes evident that this regulation is having no impact on “preventing” the spread of COVID-19, it should also have a “Phase-Out” period so as to not perpetuate an ineffective regulation.

But even if a “Phase-Out” was defined, we have no confidence in the Council’s ability to abide by it. The Council has repeatedly defined and re-defined its public health regulations regarding masking to make it perpetually required. We would be dumb not to expect a similar experience with this regulation.

With Omicron, no one can say with a straight face that vaccines “prevent” the spread of COVID-19. Anyone who tries to make that claim is either dumb or a liar. This is a high-cost regulation that will be highly ineffective against its stated goals. We do not need this regulation in Montgomery County.

I oppose.

Michael Patrick

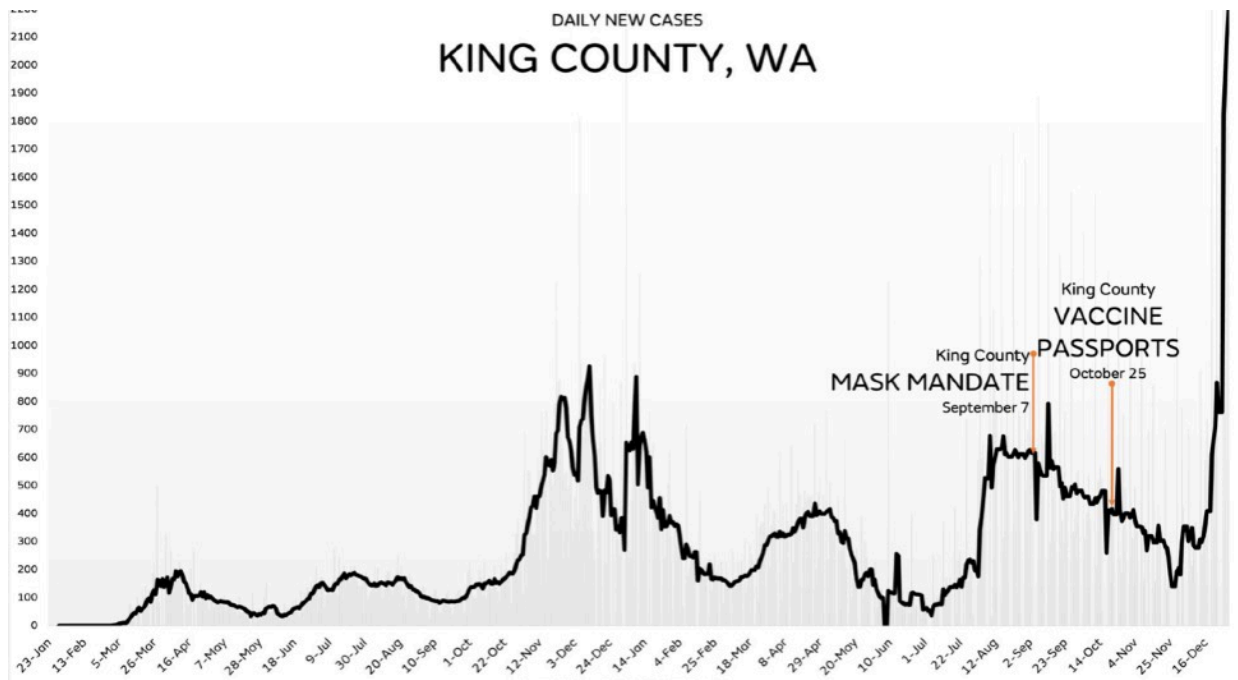
January 3, 2022

Dear Members of the Board,

Thank you for your work leading our county! We love so many things about living here, including the wonderful parks, well-designed road and transportation systems, and great emergency services.

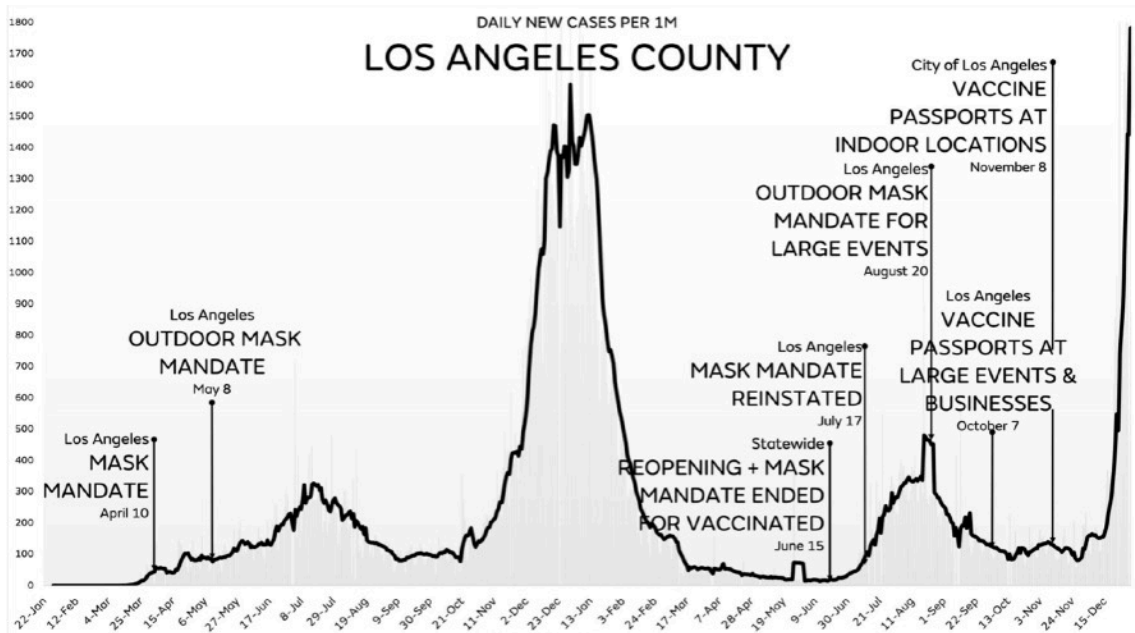
We wish to express our very sincere concern over the proposal that is being considered regarding a vaccination passport system here in Montgomery County. The Covid-19 pandemic has now been going on for nearly 2 years and we understand that solutions are desired to end it. We would all like to be safe, and move past this pandemic; however, a vaccine passport system is not the solution. **Similar vaccine passport systems have been enacted all over the world with little to no effect on reducing the number of cases or hospitalizations in the areas where they have been enacted.**

- ➔ In Seattle, a vaccine passport system was enacted on October 25th. Cases are currently at record highs, up 455% since the implementation of the passport system.



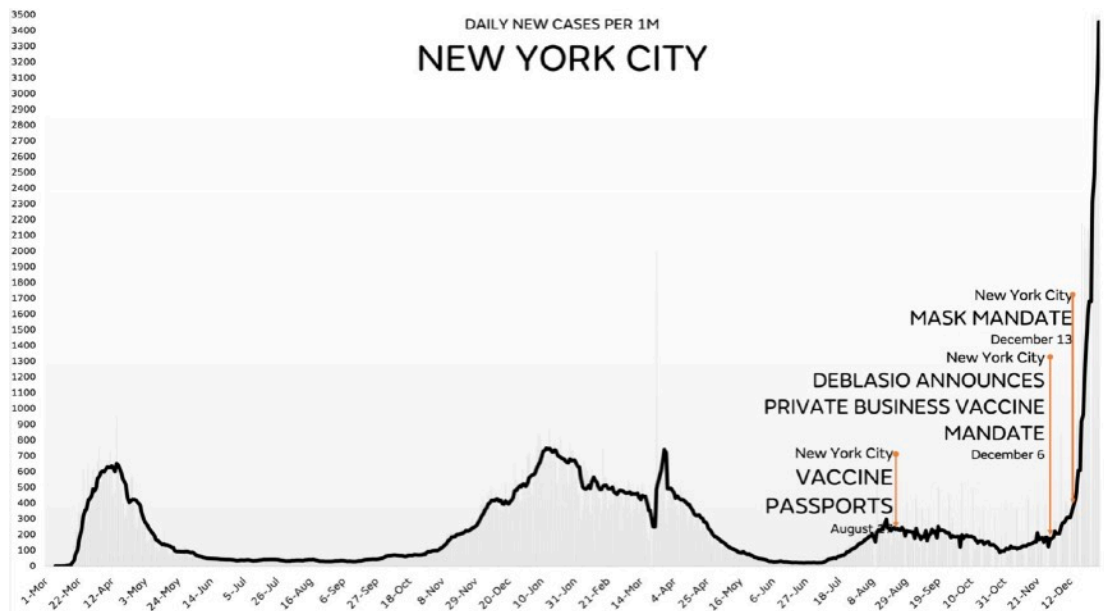
Source: NY Times Covid-19 Data- 7 Day Avg.

- ➔ In Los Angeles, vaccine passports were implemented for large events and gatherings on October 7th and for all indoor activities on November 8th. Since then cases have reached record highs.



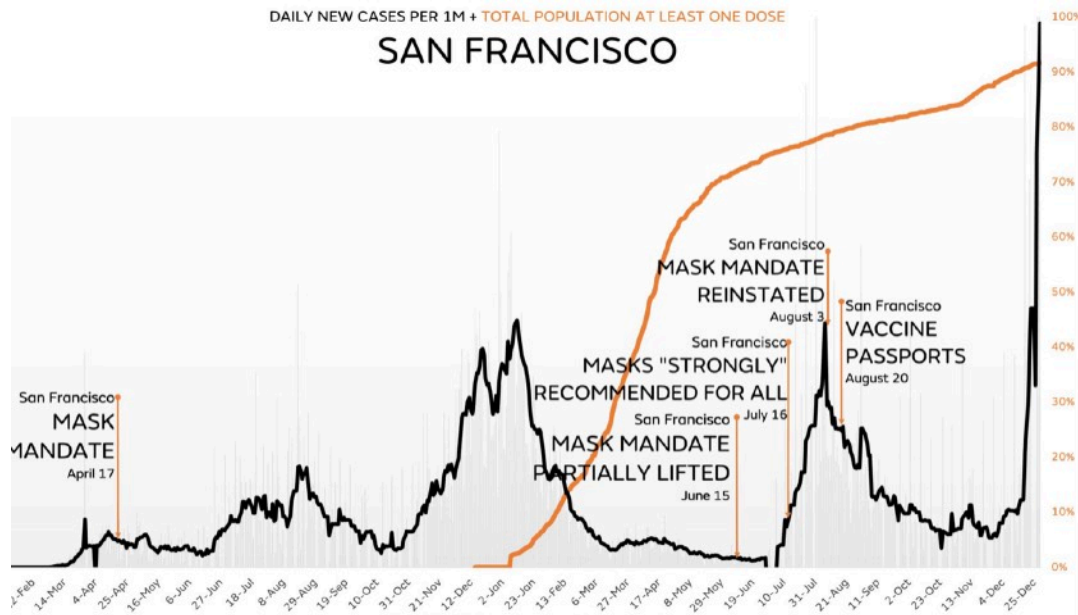
Source: Johns Hopkins CSSE Covid-19 Data- 7 Day Avg.

- ➔ In New York City, cases are up 1,342% since vaccine passports were implemented on December 6th.



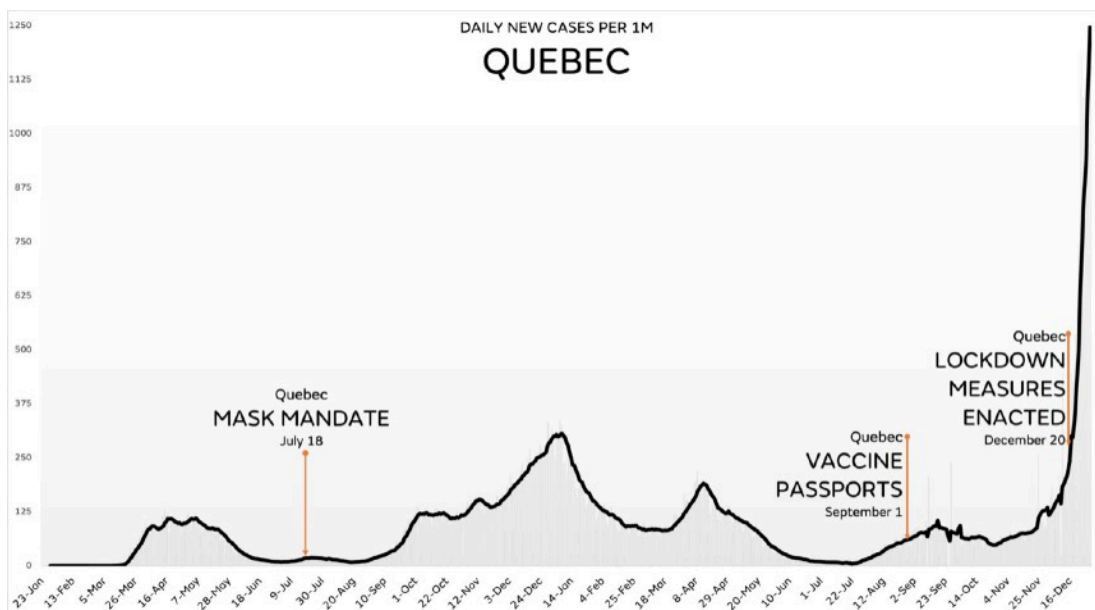
Source: NY Times Covid-19 Data- 7 Day Avg.

- ➔ San Francisco implemented a vaccine passport system on August 20. Since then, cases are up 1,765% despite 92% of everyone being vaccinated.



Source: California Public Health Open Data- 7 Day Avg.

- ➔ In Quebec, 85% of the population is vaccinated, and cases are up 1,855% since vaccine passports were implemented.



Source: Johns Hopkins CSSE Github- 7 Day Avg

The point in bringing up these numbers is to show that vaccine passports will not have the intended effect some may believe they have.

Meanwhile, vaccine passports in Montgomery County will likely hurt our community in at least three ways:

1. Create a burden on local businesses who would have to add another task to their workforce without compensation for that work.
2. Create an invasion of privacy for individuals.
3. Engender a false sense of security for those that visit the passport-only establishments. It has been well documented that those who are vaccinated, (and even boosted!) can still be carriers and spreaders of Covid-19, as well as be infected by it, so they may spread the virus at an increased rate with this false sense of security.
4. Place an inequitable exclusion on our county's children (as they have the lowest vaccination rate per age group). Our children have already carried more than their fare share of the burden as we can clearly see by documented learning loss, rise in mental illness and suicide, and loss of social development through time with extended family and friends.

As you weigh the decision to implement a vaccine passport system here in the county, please keep these points in mind. Vaccination passports are not the solution we seek to lower cases or end the pandemic.

Councilmembers, please ask yourselves: what evidence can you present to the County that vaccine passports will mitigate the spread of Covid-19 or increase our County's overall public health and well-being?

Sincerely,

Tyler R. Johansen & Nicole M. Johansen

Dear Councilmembers,

As a Montgomery County resident who is fully vaccinated and boosted against COVID, I write to express opposition to the proposed vaccine passport regulation. I'm thankful for the protection against severe disease and death that vaccines provide me. But the proposed vaccine passport system would not effectively limit transmission of the Omicron variant, would disproportionately harm younger children, and would establish a precedent for future internal passport systems that could be used to abuse civil rights. Moreover, the current proposal reflects an unfortunate "pandemic forever" mentality. It's reasonable to impose tailored and time-limited restrictions to protect the health system during the current Omicron wave. But we need to look for a way out of the pandemic, not create a system of permanent pandemic restrictions.

A vaccine passport system is an ineffective tool against the Omicron variant because this variant has a much higher tendency for breakthrough infections. The CDC's webpage on the Omicron variant touts the protection vaccines provide "against severe illness, hospitalizations, and deaths." However, the CDC also states, "breakthrough infections in people who are fully vaccinated are likely to occur" and "CDC expects that anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don't have symptoms."¹

More detailed information is available from the UK, which is further along in the Omicron wave. Regarding effectiveness against symptomatic disease from the Omicron variant, the UK Health Security Agency (HSA) stated last Thursday, "Among those who had received 2 doses of Pfizer or Moderna effectiveness dropped from around 65-70% down to around 10% by 20 weeks after the 2nd dose."² The italicized language is particularly pertinent to the vaccine passport proposal because most Montgomery County residents received their second dose long ago, 20 weeks or more before the proposed two-dose passport requirement would come into effect on 2/15/22. With so little protection against symptomatic disease, what basis is there for believing that vaccine passports will effectively limit transmission of Omicron?³

The UK HSA's conclusions should not be surprising. Montgomery County already has extremely high vaccination rates. If this effectively limited transmission of the Omicron variant, we would not be seeing the high positive test numbers and positivity rates that currently exist.

The current proposal is also mistimed because it would not be fully implemented until after the current Omicron wave is largely over. After the Omicron wave subsides, we will be living with an extraordinarily transmissible but substantially less virulent strain of SARS-CoV-2. We do not currently have the means to stamp out this strain of SARS-COV-2. But the existing high vaccination rates combined with the increasing availability of Paxlovid should allow us to manage its effects.

Ease of counterfeiting is also a weakness of the proposal. This weakness could only be remedied by costly, time-consuming, and personally intrusive measures.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (updated 12/20/2021).

² UK HSA "COVID-19 Vaccine Surveillance Report," p. 13 (1/6/2022) (emphasis added) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045329/V.vaccine_surveillance_report_week_1_2022.pdf.

³ I address the initial vaccine regimen because the vaccine passport proposal does not require boosters. Regardless, the UK HSA report shows that a booster shot's effectiveness against symptomatic disease also wanes relatively quickly. UK HSA "COVID-19 Vaccine Surveillance Report," p. 13 (1/6/2022).

The vaccine passport proposal would also disproportionately harm children aged 5-11 because they represent the segment of the population that currently has the lowest vaccination rate. Excluding children from common social and cultural opportunities, even museums, is particularly unjust because children have borne the brunt of pandemic restrictions, even though COVID presents a relatively low risk to them and adults now have the ability to strongly protect themselves from severe disease with vaccines. Further, it is unreasonable and unprecedented to impose a vaccine requirement on children who became eligible only two months ago for a vaccine under emergency use authorization.

Finally, internal passport systems have an ignoble history as a favored tool of authoritarian regimes. Even if the current proposal had merit, establishing a broad-scope internal passport system paves the path for uses not envisioned now, including civil rights abuses. For a long time, Americans have instinctively resisted internal passport systems, but if internal passport systems become normalized, these systems will be seen as just another policy tool and could be widely employed by officials of various ideological stripes for ends no one can now contemplate.⁴

I ask the Council to focus on reasonable, tailored measures that are likely to be effective against the Omicron wave and to reject the vaccine passport proposal.

Michael Spencer
Montgomery County resident
1/10/22

⁴ I realize that there are laws requiring people to present identification for discrete purposes, but the vaccine passport's great breadth constitutes a difference, not only of degree, but of kind.

Montgomery County Council
sitting as the Montgomery County Board of Public Health

Public Hearing on the Board of Health Regulation to prevent the spread of COVID-19 in the
County, Vaccination Requirements to Enter Bars, Restaurants,
Fitness Centers, and Other Covered Establishments

January 18, 2022

Testimony of Aaron Droller
Silver Spring, Maryland

Good morning Council President Albornoz and members of the Montgomery County Council. My name is Aaron Droller, and I am a resident of Silver Spring, Maryland. Thank you for the opportunity to submit testimony on the Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments (Regulation).

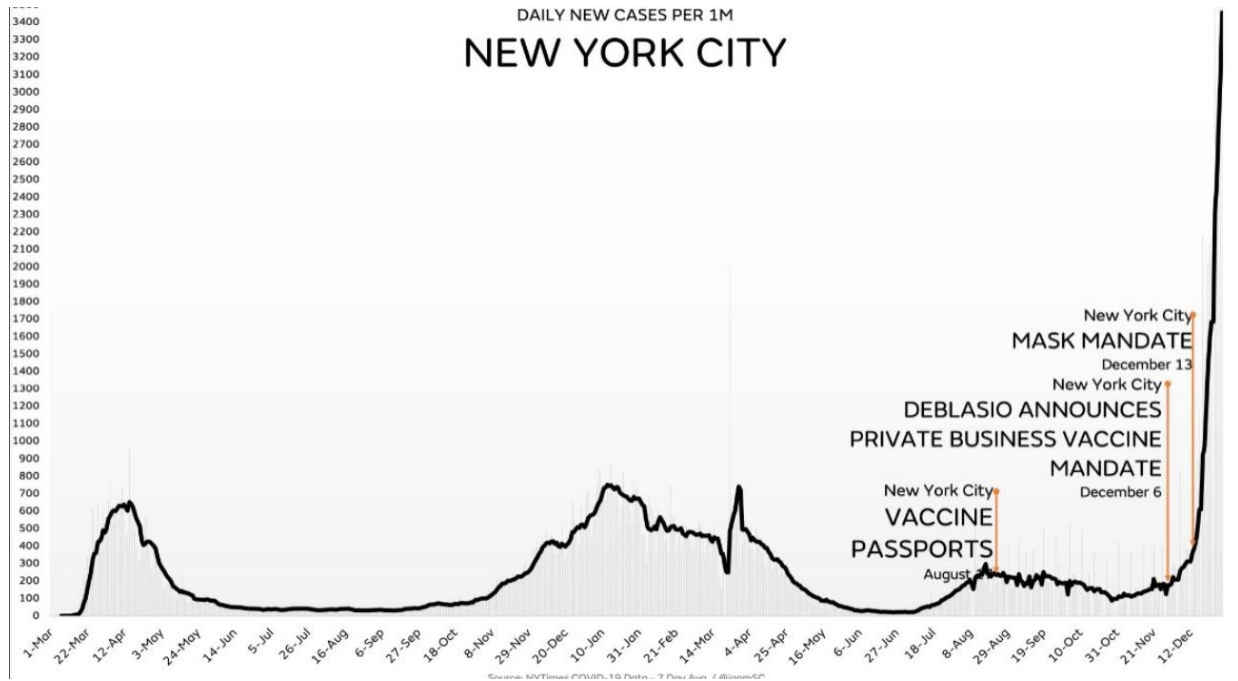
While I strongly support the use of vaccines, I am writing to respectfully request that you vote against this Regulation. As proposed by the County Executive, the Regulation establishes proof of vaccination requirements, commonly referred to as vaccine passports, to enter certain businesses and facilities, with limited exemptions. I understand that several members of this Council have already voiced support for this measure in principle, but I ask you to please reconsider given mounting evidence that vaccine passports are ineffective, outdated, and inappropriate in Montgomery County.¹

The purported objectives of vaccine passports, as described in the Regulation or by public statement, can be distilled into three primary areas: (1) mitigate the spread of COVID-19; (2) incentivize vaccination; and (3) provide a level of comfort, predictability, and safety to patrons or businesses. Vaccine passports will achieve none of these objectives.

There is very little, if any evidence, to support the proposition that vaccine passports help mitigate the spread of COVID-19, particularly regarding the omicron variant (omicron). The County Executive can point to no studies, data, or evidence that supports this proposition. From real world experience, we know vaccine passports are an ineffective mitigation measure. New York City implemented its vaccine passport well before the onset of omicron, and the subsequent

¹ <https://www.nbcwashington.com/news/local/montgomery-county-considers-requiring-proof-of-vaccination-for-restaurants-venues/2924017/> (last visited January 7, 2022).

spike in cases, without any discernible mitigation effect, demonstrates its failure. This is not a model that Montgomery County should seek to emulate.



It is clearly established that the virus commonly breaks through fully vaccinated and boosted people. According to the state of Maryland, approximately 30% of all confirmed COVID-19 cases in Maryland since January 2021 have been among fully vaccinated individuals.² Because groups of fully vaccinated and boosted people quite easily spread the virus amongst themselves and others, the vaccine passport is an outdated approach in the age of omicron.

The County Executive cites to a Lancet study that purports to study the effect of vaccine passports on vaccination uptake.³ This study is inapplicable to Montgomery County. The study suggests that a few countries with low vaccination rates may have seen increases in vaccine

² <https://coronavirus.maryland.gov/#Vaccine> (last visited January 7, 2021)

³ [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(21\)00273-5/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(21)00273-5/fulltext).

uptake. It’s worth noting that this study was from April 2021 to August 2021, when vaccine availability was just beginning to become widespread. Montgomery County is in a very different place. We are among the highest vaccinated large counties in the United States.⁴ The Lancet study itself notes that “[m]andatory COVID-19 certification could increase vaccine uptake, but interpretation and *transferability of findings need to be considered in the context of pre-existing levels of vaccine uptake and hesitancy*, eligibility changes, and the pandemic trajectory.” (Emphasis added). In Montgomery County, residents have enthusiastically embraced vaccination, including booster shots. The County Executive has provided no evidence that vaccine passports induce higher vaccination uptake in a population that is already highly vaccinated. Simply put, Montgomery County residents do not need vaccine passports as additional incentive to get vaccinated.

Vaccinations in Montgomery County, Maryland

People Vaccinated	At Least One Dose	Fully Vaccinated
Total	1,031,983	879,167
% of Total Population	95%	83.7%
Population ≥ 5 Years of Age	1,031,856	879,149
% of Population ≥ 5 Years of Age	95%	89.1%
Population ≥ 12 Years of Age	979,693	842,824
% of Population ≥ 12 Years of Age	95%	94.5%
Population ≥ 18 Years of Age	891,432	765,670
% of Population ≥ 18 Years of Age	95%	94.7%
Population ≥ 65 Years of Age	190,658	168,255
% of Population ≥ 65 Years of Age	95%	95%

There is some indication from policy makers and the public that vaccine passports are desirable as a matter of comfort, safety, and predictability, as patrons in a business establishment will know that everyone around them is presumably vaccinated. This assumption, while understandable, is not supported by the risk profile from omicron in the county. Rather, it is

⁴ https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Maryland&data-type=Risk (last visited January 7, 2022).

policy making based on emotion rather than reason. As previously stated, breakthrough cases among fully vaccinated and boosted residents are extremely common. There is no assurance that being among similarly vaccinated individuals will provide any sort of cocoon or protection from the virus. Further, given our high rate of vaccination, most patrons can already presume almost everyone around them is already vaccinated.

Many Councilmembers have suggested the importance of acting as a region in our public health efforts. This goal, while laudable, cannot override the different needs of different jurisdictions. Currently, only the District of Columbia has a legally authorized vaccine passport program in our region. The needs of the District of Columbia, a tightly packed urban jurisdiction and an international tourist destination, are not the same as suburban, highly vaccinated Montgomery County. Currently, no other jurisdiction has a similar program, including Howard, Prince George's, Anne Arundel, Frederick, or Fairfax counties. Given our vaccination rate and robust healthcare infrastructure, Montgomery County should follow our regional partners that maintain the least restrictive covid policies.

The Regulation also presents ethically dubious or medically incoherent approaches. As introduced, it requires children ages 5 and up to present a vaccine passport as of March 1, 2022 verifying one dose of vaccine. As of today, the only vaccine authorized for children that age is authorized only as an Emergency Use Authorization (EUA). No child should be excluded from society because they have not received an EUA vaccine, particularly given how little risk the virus poses to this age cohort. By contrast, senior centers are exempted from the vaccine passport under the Regulation. This exemption makes little medical sense, given that this age cohort is by far the most vulnerable to the virus. The Regulation's approach is haphazard, scientifically incoherent, and requires far greater scrutiny before being approved by the Council.

There are also practical and administrative concerns with the Regulation. There are significant cybersecurity and medical privacy concerns with Maryland MyIR and the myriad other digital vaccine record products coming online. People without compatible smart phones are also unable to access certain digital ID formats. Paper or pdf documents are easily forged, destroyed, and are unreliable. These administrative issues will present significant inconvenience and costs to residents and businesses alike as time passes and the viral situation on the ground shifts.

The Regulation also places significant additional costs and burdens on our business community. It targets those businesses that have suffered the most during this pandemic. While “big box stores” are exempt under the Regulation, small businesses and restaurants are required to implement it, without any regard for the time and costs involved. Restaurant employees and gym attendants will often need to make extremely subjective judgment calls to verify vaccine passports, increasing the potential for conflict between patron and business owner when an app goes awry, or a piece of paper is forgotten at home. It also puts businesses in the impossible position of verifying if a patron has a valid religious or medical exemption, while exposing themselves to potential liability and costly enforcement actions.

It’s worth noting that, according to Montgomery County statistics, the African American vaccination rate is currently lower relative to other ethnic groups and its share of the population, particularly in the 5–11-year-old age range. Accordingly, the aggressive implementation of a vaccine passport could have a racially disparate impact.⁵ So too, the Regulation unfairly targets and discriminates against families with young children, since that population is also less likely to be vaccinated at this time. Children’s lives have been turned upside down during this pandemic

⁵ <https://www.montgomerycountymd.gov/covid19/Resources/Files/pulse/DHHS-Pulse-220105.pdf> (last visited January 5, 2021).

as they have borne a very high burden under the policies of this county and the school system. It should never be the policy of this government to socially castigate and isolate groups of people, even in the name of public health.

The county should only implement COVID-19 policies that are narrowly tailored and time limited. This Regulation does not meet those standards because there is no limiting principle at its core. For example, the Regulation grants the Health Officer near unlimited power to require an indoor establishment to implement a vaccine passport “upon reasonable advance public notice,” but without opportunity for public comment or any procedural due process.

One of the lessons of this period is that additional variants will come and go, and additional vaccine doses will be authorized, possibly in perpetuity. This vaccine passport has no sunset date, and once implemented, will metastasize beyond what is intended into a permanent feature of life in Montgomery County. The vaccine passport must not be allowed to follow that path. This Council must firmly establish a limiting principle at the outset if it chooses to pass this Regulation, or residents have no assurance it will ever be repealed.

The Regulation will not meet any of its intended public health objectives. In the long run, it will only serve to exacerbate social tensions and turn neighbor against neighbor. Montgomery County is an inclusive community. We should not wish to exclude groups of people from society with a poorly conceived policy. Please vote against this Regulation. It is the wrong path for Montgomery County. Thank you for your time and consideration.

January 13, 2022

Esteemed Councilmembers,

I write to you in strong opposition to the proposed county vaccination requirements to enter bars, restaurants, fitness centers and other covered establishments (“vaccine passports”). There are three main reasons why the councilmembers should reconsider this well-intentioned but deeply troubling policy.

First, the vaccine passport policy should not include fitness centers. Fitness centers and gyms are *not* mere recreation or entertainment facilities. Exercise is as necessary to robust health as sound sleep and nutritious food. To deny people access to gyms – for vaccination status or any other reason – is in fact to intentionally damage their bodies. If it implements this policy, the Council will in fact be saying to the public: “You will comply with our public health goals or we will retaliate by intentionally damaging your health.” Such a stance would be unethical, self-contradictory, and draconian.

Second, this policy fails to account for the role of natural immunity and individual medical circumstances by imposing a “one size fits all” mandate. Real life, however, is more nuanced. Does the Council *actually* know that a young, healthy person with a documented infection plus *one* dose of vaccine should be *forced* to receive a second? Should a 20-year-old with a previous covid exposure be *forced* into the same vaccination rubric as an 80-year-old with multiple comorbidities? Is the Council actually accounting for the *costs* as well as the benefits of this policy? A 35-year old friend of mine, in perfect health, recently developed shingles – at 35! – as a side-effect from a covid booster. I myself had a difficult 10-day natural covid infection before the vaccines were available, and the months-later required vaccine dose gave me the highest fever I’ve ever had in my life and nearly sent me to the ER. There are costs, known and unknown, to *forcing* these injections on people. Is the council accounting for those costs, or is it simply laying down a crude, indiscriminating, not-narrowly-tailored mandate without due consideration for nuances, details, and scientific uncertainty? Moreover, once the Council sets the precedent of vaccine passports and opens this door (*i.e.* once it subjects people’s personal decisions about their own bodies to the impulses of a public majority vote), it likely will only be a matter of time before booster requirements will be added – one booster, then two, then who knows how many more to placate mass hysteria? And why stop at covid vaccines, when there are so many other actually beneficial regulations that could be forced onto people’s bodies to improve public health?

Finally, the covid passport policy should be rejected because it is authoritarian. This policy says, “We the County Council do not care about your consent. We do not care about your reasons or your thinking. We will simply *force* you to do what we want because we know with absolute certitude what is best.” This dangerous illiberal tendency – which at the moment is growing frighteningly on the political left – should be rejected, because history suggests that it never works out well in the end. Human beings are fallible, and for that reason *decentralized* decision making – whether in the economy or in health – yields the best outcomes by letting individual actors make the right decisions based on all known information and the specifics of their own cases – specifics that centralized mandates cannot account for.

Of course, it is possible that the US Supreme Court will strike down “vaccine passports” as unconstitutional anyway, and it is likewise possible that the county, lacking sovereign immunity, will be opening itself to manifold litigation and liability by de facto compelling people to incur known and unknown costs of unnecessary vaccinations; however, the best reason to reject this policy proposal is that *forcing* rather than persuading is rarely the right road to take in a free and democratic society.

Respectfully,

Chris A. Lee
Rockville

I am writing to express my vehement opposition to the purposed COVID-19 passport. I am a life long resident and small business owner of Montgomery County. The restrictions the county as already placed on businesses over the past 2 years have already made doing business difficult at best. This proposal would further hinder county businesses from being successful and would not help to quell the spread of disease since vaccinated persons can still contract and spread the virus. I myself, and many others, will opt to take our businesses to neighboring counties if required to show proof of vaccination. I am vaccinated but feel my medical status in not information that the county needs access to, nor do I believe it is legal (HIPPA violation). It is no more ethical to ask me to reveal my vaccination status as it is to ask me to reveal any other medical information.

Diana Patton

I just wanted to voice my opinion against the vaccine passport. I own a restaurant and do NOT want my team members having to deal with the conflict with guests who get upset over this. It is not fair to put the burden on a private business to serve as the police for public health policy. A few other thoughts are that the virus is spreading among the vaccinated and boosted as well, so I don't see the impact that this is going to have on slowing the spread- and this is unfairly targeting businesses such as my own. And as a result, people will elect to drive down the road to Howard County and dine in without showing a passport. I am hearing from a lot of people that are fully vaccinated that they will refuse to dine-in in Montgomery County because they believe this is invasive and government over-reach. I am vaccinated and also agree with that sentiment. Personally, I am about to take out a group of people to dinner on Jan 24th, and if this goes into effect before then, I will be moving my reservation from Clyde's in Rockville to a restaurant in Howard County.

Sincerely,

Erik Amick

Owner

Chick-fil-A Olney

Erik Gomez

January 18th, 2022

Meeting on Covid-19 Vaccine Passport Mandate

Dear Council,

I write this letter two years after the start of an unprecedented pandemic that forever changed everyone's lives. We have weathered wave after wave and variant after variant. Undoubtedly, we are all exhausted and overwhelmed. My condolences go to those that have lost loved ones and those survivors that are now dealing with long-hauler symptoms.

Luckily, the world is in a different position than in previous waves. We have at least four vaccines that offer some protection against Covid and data from South Africa and elsewhere have indicated that the Omnicron variant is milder and less deadlier than the previous ones.

In addition to the severity of Omnicron, Montgomery County data suggests our county is almost at 85% of the population vaccinated against Covid. This is important because the Centers for Disease Control and Protection(CDC) have stated an 85% vaccinated rate as a reasonable threshold for herd immunity.

Our county has complied throughout the pandemic. Each and every Montgomery County resident should be praised for believing in science by getting vaccinated.

We were virtually the only county in Maryland with stricter Covid regulations, even outdoing the nation's capital, the District of Columbia. Our northern neighbor, Howard County, did not have mask mandates until recently, and they had a higher vaccinated rate than Montgomery County. Also, Frederick County did not have a mask mandate with a lower vaccination rate. So it is understandable that Montgomery County residents feel frustrated that despite good news concerning Omnicron, regulations in neighboring counties and cities, and our high vaccination rate, we are now being asked once more to go above and beyond and comply with a vaccine passport.

The rise in cases is not a result of people not being vaccinated; it results from a more virulent variant that infects even vaccinated individuals. Montgomery County is not the only one seeing a rise in cases (luckily, hospitalizations are not as high). Thus, based on South African data, it seems we are in the final phase of a pandemic and entering an endemic phase. We cannot introduce a vaccine passport when we did not do the same last year when Delta was much deadlier. We cannot introduce a vaccine passport now that we are reaching an 85% vaccination goal.

A vaccine passport mandate will not persuade those that are currently not vaccinated to get vaccinated. If anything, it will make residents angrier at the fact that the community is ostracizing them, coming from a fully vaccinated person. Furthermore, what is the point in a vaccine passport mandate when there have been few reports of large outbreaks from indoor dining, gyms, indoor entertainment establishments, etc. Most people are infected in private gatherings.

Thus, I end this letter by imploring you not to pass another rule that you will perhaps need to tweak (as the fiasco with the moderate to substantial transmission mask lifting this fall showed us).

Dear Montgomery County Council,

Please vote an emphatic NO on the resolution to introduce vaccine passports into Montgomery County. Especially since the Omicron variant is infecting people regardless of vaccination status, and is being spread just as readily by vaccinated people, there is no longer a need to distinguish between vaccinated and unvaccinated classes of citizens. Your goal appears to be to incentivize people to get vaccinated, but the actual effect will likely be for the unvaccinated to dig in their heels. If they were not convinced up to this point, a heavy-handed government response will only reduce citizen trust of the government. Instead, this group of people is likely to simply disregard the vaccine passport idea and visit these businesses anyway, adding to the burden of the folks at the door who are not trained to handle customers that disregard the rules. Alternatively, they will simply bring their business to other counties, reducing your revenue. In addition, the lack of ability to enforce this mandate will only further reduce the credibility of the Montgomery County government. Is this a wise hill to die on? Do you alienate your citizens with so little potential for an actual effect on the virus?

Joe Gresock
Maryland resident

Councilmembers,

I support strongly the proposed requirement of proof of vaccination to enter restaurants, etc. Theaters and concert halls already require such proof and it is no burden to patrons.

Every encouragement to get people vaccinated should be used. Covid will not be brought under control until almost all are vaccinated.

John Hansman
Rockville

Public Hearing Response

Regardless of vaccination status, anyone can spread the virus. Especially with the new variant, the virus is everywhere. Pretending we can stop it and that banishing people from indoor facilities based on their vaccine status will help is not logical. This will only hurt businesses and will do more harm than good.

Our kids medical decisions should be made by myself(their father), their mother and their pediatrician and regardless of that decision, that should not impact their ability to enter a private business.

As someone that received all 3 Pfizer shots and still got Covid, the idea that this county is considering discriminating against kids like mine is appalling.

Stop operating with a one track mind where preventing Covid is the only goal. Kids have lost enough over the last 2 years, don't take more away from them!

I am addressing the effects a vaccine passport will have upon small businesses. As the daughter of a small business owners, I am no stranger to this topic. My approach for this testimony will mainly consist of subtopics and questions.

Subtopic 1: The business owner who refuses to be vaccinated for personal or religious reasons

Q –

- What becomes of his/her business?
 - Will the business owner be required to hire someone to replace him/her as he/she will NOT be able to enter his/her office or restaurant space?
 - What if the business owner has purchased the space/building? Will the same rules apply?

Subtopic 2: The independent contractor/small business owner working from home

Q-

- Will the county interfere if this person holds in-home meetings that are not virtual?
- What if this person travels to others?
 - Must this person ONLY visit clients who remain unvaccinated?

Subtopic 3: The “passport bouncer” at the door and follow-up measures

Q –

- Will small businesses be required to hire such a person?
 - Will training be required to detect which passports are fake?
- If the passport is a fake, will the business be required to call the police?
 - Will police have enough employees to address these calls? Has anyone in the county council addressed this issue with the Montgomery County Police Department?
- What if a business refuses to check passports?
 - Will it be shut down?
- What if a business cannot accurately determine which passports are real and which are fake?
 - Will the business be fined?
 - What is the fee?
 - How many warnings until the county shuts down the business for too many violations?
- What about drive-through orders?
 - Will customers be asked to show their passports before ordering?

Subtopic 4: County oversight

Q –

- Will the county need to create a vaccine passport oversight agency to ensure compliance?
 - If so, what is the estimated cost?
- Will employees be assigned to specific districts, for example?
- And how might compliance be handled in order to **NOT** violate privacy issues?

Subtopic 5: Privacy

Q:

- Will all job applicants be asked to provide copies of their vaccination status to each employer?
 - Who ensures this information is stored safely?
 - Who ensures the information is accurate and updated?
- Although the EU has stated that excessive boosters may actually adversely affect immune response, should boosters be “mandated” every few months, how will small businesses be able to handle compliance without violating privacy?

Subtopic 6: Fleeing the county

Q–

- Is the end goal to support businesses in **surrounding** counties?
 - Montgomery County is large. People will flee to Frederick, Howard, Anne Arundel and Prince Georges counties for shopping and entertainment.
- Simply put, not all vaccinated people are in favor of this measure. Many, in fact, were forced to vaccinate to feed their families and to keep a house over their heads.
 - How many people in Montgomery County fit this category?
- Shouldn't the county survey who is in favor of what?
 - By survey, I mean an accurate and FAIR assessment that encourages everyone with different perspectives to respond.
 - Why wasn't this proposed mandate officially presented TO the people in a fair manner that allowed them time to research the ramifications?

Once people flee the county, they will never return should this passport become effective in January 2022.

I strongly disagree with mandating children to be vaccinated to enter public facilities. The decision to vaccinate or not should be in the hands of the parents, not the government.

Resolution to adopt Board of Health Regulation - Vaccination Requirements to Enter Bars, Restaurants, Recreation Centers, and Other Covered Establishments

I VOTE – NO – on this resolution.

The people of this country do NOT need the Government to tell them what and how to do everything!

This is not needed and will only further hurt retail establishments.

Sherolyn S. Nanson

Rockville, MD 20852

January 17th, 2022

Montgomery County Council
Council Office Building
100 Maryland Ave., 6th Floor
Rockville, MD 20850

Dear Councilmembers,

In this letter, I add my testimony to the proposed vaccine passport for Montgomery County. In short, I am a MoCo resident, a pharmaceutical process engineer, and a lifelong Democrat--and I am against vaccine passports and vaccine mandates on multiple different levels of analysis.

First and foremost, vaccine passports have shown no ability to stop the spread of SARS-CoV-2. Between France (7/21, [OWID data](#)), Italy (8/6, [OWID data](#)), New York City (9/13, [trend](#)), and Los Angeles (11/8, [trend](#))--among many, many others--there is not a single success story that shows that the passports were able to reduce spread, especially after the appearance of the Omicron variant. This pattern will continue, as SARS-CoV-2 has a mutation rate ([Nature](#)) on the same order of magnitude as the flu, albeit lower. We have already seen first-hand that this mutation rate is enough to cause vaccine escape--it took less than one year of mutation to find a strain capable of bypassing our best vaccine. That will continue to happen again and again, despite our attempts to thwart fundamental forces of biology, especially as dogs, cats ([CDC](#)), and deer ([UMN](#)) are also reservoirs of the virus.

Second, the cohort of people that are *both* unvaccinated or uninfected is incredibly low. Across the country, 92% of people in the US are seropositive for SARS-CoV-2 by either vaccination or infection ([CDC, Oct 21, Combined, Study Wide](#)). If we *truly* believe that pinpointing this 8% of the country will make everything better, I'd like to point out that 300 thousand people in Maryland have been infected between 12/1 and today, representing 5% of the state's population...and that's without considering that many used at-home tests and did not report positives to health authorities. All that in a few weeks. Also, it should be noted that the CDC estimates we miss about 71% of all infections, so you can draw your own conclusions. Even Dr. Fauci believes that most everyone will get Covid now ([CNN](#)).

And if the concern is hospital burden, I have to ask, why are we focusing on everyone? Following the Pareto principle, most hospitalizations and deaths occur in the elderly and infirm. In the most recent data out of the UK government's weekly vaccine surveillance reports ([Week 2](#)), the difference in hospitalization rate for unvaccinated 18-29 year olds was only 6 hospitalizations/100,000 individuals/4 weeks (compared to vaccinated). In Montgomery County terms, that equates to about 9 saved hospitalizations of the same age group in a month (assume 14% of total population). What's the equivalent in those over 80? In the UK, that's 242/100,000 individuals/4 weeks, and MoCo an equivalent 101 hospitalizations a month saved, even only using an estimated 4% of the county's population. Current hospitalization rates show 70+ year olds being hospitalized at a 6X higher rate than 18-29 year olds ([CDC](#)). I am by no means blaming the elderly, but the point has to be made that once the most at-risk people are vaccinated, the returns become rapidly marginal.

I also heard mention of potentially requiring the passport to require boosters as well, since two doses do little to stop spread of Omicron. This is a dangerous path. Last week, the European Medicines Agency

cautioned against fourth booster doses and boosting every four months as it “...would not represent a sustainable long-term strategy” and “hypothetically poses the risk of overloading people's immune systems and leading to fatigue in the population” ([Reuters](#)). I really don't think the County Council wants to assume the role of jumping headlong into mandating boosters, being liable to the public as the technical reviewers of vaccine research, as the research is still being collected and debated on even the third booster. Mind you, Pfizer and Moderna are coming up with new vaccines *anyway* since they know that Omicron has largely escaped the vaccine with regards to spread and symptomatic infections.

Finally, these passports are incredibly unpopular and will only serve to hurt the state Democratic Party in the gubernatorial and senatorial races this year. I don't think anyone in their right mind thinks that this will win over Independents or Republicans this year, and I do not think that ditching the vaccine passport plan will send Democrats over to the other side. Most people I know are over Covid at this point--they've been vaccinated, they caught Omicron, and now they wonder “What's the point?” Why do I have to show my papers everywhere when 95% of the country doesn't have to? Not implementing passports will not be a primary issue, and if it is, it will represent a small subset of the county. Also, and coming from someone that is generally pro-vaccine, no one wants the *county government* ruling on what medical procedures should be performed on them. As a liberal, this is anathema. Furthermore, this is too broad a power to give over to any legislative body. By this logic, a legislative body can mandate any medical procedure or restriction as a matter of public health, which can be used to significantly impinge on freedoms, even if those freedoms are vices. Smokers are at more risk to Covid-19 than non-smokers—does the county wish to ban smoking? Overweight and obese individuals are also at more risk to Covid than those who are not—does the county wish to ban fast food and alcohol? Goodbye voters. And furthermore, do we wish to stigmatize these people, causing them to dig in their heels, potentially even to *all* vaccines? That is a scary thought, and will only turn people away to parties that will stop the restrictions. Remember, Prohibition didn't go well, and this is only more fuel for a “red wave” like what happened in Virginia last year. Don't let Dems be the “Papers Please” party.

There is no good that comes from this. The real-world data on Covid passports is very bad, and the benefit to the healthcare system could be minimal, especially since Omicron itself is a 53% risk **reduction** for hospitalization, 74% risk **reduction** for ICU admission, and **91% less risk of death** in a pre-print from [Kaiser Permanente](#) that was deemed good enough to tweet by CDC Director Dr. Rochelle Walensky ([Twitter](#)). This county...this country...this planet has suffered far enough over the past two years, and despite our best efforts, we still got stuck with a variant that spreads to even the boosted, such as County Executive Elrich. And if Omicron gets displaced by a more infectious variant, then who are we kidding ourselves to think that more restrictions are going to fix things next time?

This is not admitting defeat. **We won.** We held out for a year, got a vaccine which saved millions of lives from more lethal variants, and now have a variant which is significantly weaker for everyone. But we need to move on. Most people I know, including most Democrats, have. We go to bars, restaurants, gyms, and movies. We take buses, trains, and planes. We handshake, hug, and smile. Omicron is beginning to wane and spring is right around the corner—let us be patient and resolute, we can handle this without vaccine passports.

I'd love to write more, but I feel I've said more than enough. Thank you all for your consideration.

Best regards,
Robert McGrane

I am strongly against the proposed bill. Yes, I Am vaccinated, but I do not believe it is correct or healthy to create an us and them culture which also causes more discrimination issues. Individuals should make the choice for their own body and not for fear they will be barred from society. Nor should they HAVE to share their private health history with the public.

You want people to show their private health history of vaccination but NOT that they have natural immunity after having covid. It is Not fair or correct to have one and not the other.

Presenting proof of vaccination does NOT prove a person is negative. How does showing your vaccination card prove you are Not positive? I am Vaccinated and yet I was walking around last week POSITIVE with almost zero symptoms for three days before I tested positive. If I had presented my vax card to go eat somewhere, I still would have exposed others. Clearly we ALL know people now who are vaccinated and boosted who tested positive. Therefore, showing a vaccination card does not change that. We are seeing cases spread with the vaccinated and the boosted not just in Montgomery County, or Maryland, but in most states in this country and in countries around the world! You all see and KNOW this. Yes, symptoms are less severe and except for some of the elderly whose bodies cannot handle much more and those with health issues , vaccinated And unvaccinated are surviving it easily. Vaccination may limit death rates but clearly not the spread. This shows we don't know enough about this vaccine still, yet you also want to force it on bodies in the womb and young growing children.

I am EXTREMELY against this bill regarding the forced vaccination of children. Especially when their survival rate is OVER 99%. It is illogical to force them to be vaccinated against a disease basically that doesn't affect them any more than a head cold. The vaccine has not been adequately tested long enough to know the side effects and risks for the growing bodies of children. If adults are worried about getting it from the kids, they can choose to get vaccinated. Even though kids have natural immunity after getting it and will actually save the rest of us.

I urge you and hope that you will strongly consider and sincerely care about Montgomery County's resident's freedoms, privacy rights, physical, mental, and social well-being more than any political agenda.

Theodora Kavadias

To Montgomery County Council Members,

Please do not implement the vaccine passports that will cause undue burden on the public to carry passports for all their guests/children and for restaurants to enforce. It will create a false sense of security for vaccinated residents since they will think they are safer when in fact due to Omicron are not. People should not let their guard down and this will create a sense of ease when it is not the case. People with boosters are even getting really sick as Marc Elrich just stated during his last message he was really sick high blood sugar levels for 13 days. He also said people that are in hospital don't have full series of vaccines. That sounds like people with two shots are being hospitalized since he did not say majority is unvaccinated. This would not be a good health measure at this time to give people this false sense of security.

Hospitals are not overwhelmed. From the Bethesda beat article "The dashboard shows that 84.6% of the county's intensive care unit beds are being used, defined as "moderate utilization." The county has been at that level since Jan. 6.

It also shows that 36% of hospital beds are occupied by patients with COVID-19, defined as "high utilization."

Stoddard and other health officials, however, have said that statistic can be misleading because of "incidental cases" — meaning that some patients are taken to the hospital for another reason, like a car crash, and test positive when admitted there."

<https://bethesdamagazine.com/bethesda-beat/coronavirus/local-hospitals-not-in-dire-straits-but-face-staffing-shortages-influx-of-patients/>

Please don't implement since everyone will be getting Omicron with or without the passports. See from Fauci below. Also, passports not stopping spread in places that have implemented them. See NYC positivity rate is at 33% positivity rate. That probably doesn't even include people who don't test which is many. <https://www.reuters.com/world/us/omicron-teaches-hard-lessons-us-schools-revamp-return-holidays-2022-01-03/>

"Omicron, with its extraordinary, unprecedented degree of efficiency of transmissibility, will ultimately find just about everybody," Dr. Anthony Fauci told J. Stephen Morrison, senior vice president of the Center for Strategic and International Studies.

From the CDC website " Breakthrough infections in people who are fully vaccinated are expected, but vaccines are effective at preventing severe illness, hospitalizations, and death. Early evidence suggests that fully vaccinated people who become infected with the Omicron variant can spread the virus to others. All FDA-approved or authorized vaccines are expected to be effective against severe illness, hospitalizations, and deaths. The recent emergence of the Omicron variant further emphasizes the importance of vaccination and boosters."

Paul Allan Offit is an American pediatrician specializing in infectious diseases, vaccines, immunology, and virology. He is the co-inventor of a rotavirus vaccine.

“Dr. Offit says, Paul Offit, the director of the Vaccine Education Center at Children’s Hospital of Philadelphia, told me that getting boosted would not be worth the risk for the average healthy 17-year-old boy. Offit advised his own son, who is in his 20s, not to get a third dose. Even with Omicron’s ability to sidestep some of the protection vaccines provide, Offit said, he believes that his son is well protected against serious illness with two shots, so a third just isn’t necessary.”

<https://www.theatlantic.com/health/archive/2022/01/should-teens-get-booster-omicron/621222/>

"I don't want people to worry that children are in the hospital sick with COVID. The numbers are high. We average 20 to 25 kids in the hospital at one time who are COVID positive, but they're coming in going out, so it's not like these are chronic infections," said Head of Infectious Diseases at Rady's, Dr. John Bradley."

<https://www.cbs8.com/article/news/health/coronavirus/cdc-record-number-of-kids-hospitalized-with-covid/509-312469a8-75a2-4f83-ac74-a21dad08bd1d>

Kid between 5 and 11 are at extremely low risk of being hospitalized with COVID or dying. The risk went even lower with Omicron. The vaccine is only emergency authorized for this age group it is not officially approved.

There is only 50% of kids vaccinated under 12 and many of them will have gotten Covid by the time a vaccine passport is implemented. Which leads me to my next point on natural immunity.

“Israeli study shows that natural immunity is 13 times more effective than vaccines in protecting individuals. “SARS-CoV-2-naïve vaccines had a 13-fold increased risk for breakthrough infection with the Delta variant compared to those previously infected.”

<https://www.clarkcountytoday.com/news/israeli-study-shows-natural-immunity-delivers-13-times-more-protection-than-covid-vaccines/>

Israel puts 6 months on their vaccine passport if you are infected with Covid. At the very least vaccine passports should account for previous infection since you have B cells and T cells to protect you from getting serious ill from Covid just like the purpose of the vaccine. See above vaccine purpose is mainly to just prevent serious disease and death.

Based on below medrxiv previous COVID infection can increase adverse events with vaccine. This would be problematic to make kids go out and get vaccines when they were just infected.

<https://www.medrxiv.org/content/10.1101/2021.04.15.21252192v1>

Omicron can protect against future covid delta variant. <https://www.cnbc.com/2021/12/28/covid-omicron-appears-to-protect-against-delta-could-displace-it-study.html>

It would not be a public health measure at this time to put out vaccine passports considering all of the above. The hospitals are not overwhelmed with COVID and many are coming to hospitals and testing positive but there for other reasons. The vaccines are not protecting from getting infection or transmitting it. Healthy kids are at very low risk of severe covid. Israel is already on the 4th booster. We don't know the safety of some many boosters in a short period of time especially for you healthy individual.

Marc Elrich also said people that are in hospital don't have full series of vaccines. That sounds like people with two shots are being hospitalized since he did not say majority is unvaccinated.

The science following Omicron is that we can encourage vaccinations but should not force upon people with previous infection which the overwhelming evidence shows a previous infection protects against severe illness.

Once we get through Omicron most people will have vaccine induced immunity or infection induced immunity so we should be good for at least 6 months from high risk of spread and severe illness for next 6 months. This policy should be reevaluated at that time. Summer is also usually low risk so most likely an evaluation of COVID wouldn't be needed until Fall. Please consider all these points when voting for this policy. Again, it is a burden on the residents and businesses when due to Omicron there is not much you can do to prevent vaccinated, unvaccinated and previously infected residents from getting it. It would also give vaccinated a false sense of security and make them feel safe when in fact they are not.

Thanks,

Dana Sklut

Council members,

I urge you to consider adding an end date or end threshold to the proposed Montgomery County vaccine passport rule, given that the covid situation in the county is likely to change in the future. The county has included end dates or end thresholds for other covid measures, such as the mask mandate, and these exit criteria have been reassessed as needed. The vaccine passport should similarly include exit criteria, at which point it can be reassessed based on the future situation. I believe this is important as a general principle for governing during emergencies.

Thank you.

-Amy Zimmermann

Dear MoCo Council Members,

1. The proposed "Health Regulation" Bill "to prevent spread of Covid in the county" is violating US Constitution, as clearly demonstrated by SCOTUS ruling against vaccine mandates for American workers.

2. The Bill violates Maryland Constitution, especially Articles First and Fourth of the Declaration of Rights: "Article 1. That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient." "Article 4. That the People of this State have the sole and exclusive right of regulating the internal government and police thereof, as a free, sovereign and independent State."

You, as elected representatives, do not provide "the good for the whole" by proposing extremely discriminatory Bill in violation of the Constitution of our State.

3. The Bill is not based on ANY scientific or medical evidence. The new wave of Omicron is neither stopped, nor prevented by mRNA vaccines, especially since these vaccines are not targeting the new SARS-Cov-2 variant. Omicron virus has 26 mutations in its spike protein, and thus present experimental mRNA vaccines generate totally different spike protein and wrong antibodies. They cannot work against Omicron.

4. CDC database VAERS (Vaccine Adverse Effects Registration System) reports as of December 31, 2021: 21,382 Deaths; 113,303 Hospitalizations; 110,785 Urgent Care; 158,762 Doctor Office Visit; 23,713 Myocarditis/Pericarditis; 36,758 Permanently Disabled, 24, 344 Life Threatening - to name a few. According to Harvard study from 2010 these data are underrepresented by factor from 10 to 100. So, multiply them at least by 10.

The proposed Bill will be responsible for deaths and permanent disablement of your constituents, especially children, not mentioning destroyed MoCo economy, including small businesses.

5. According to the clinical study conducted by Kaiser Permanent Southern California health care system – which operates 138 medical offices and 13 medical centers, plus has an affiliation with 37 community hospitals in Southern California - Omicron is incredibly milder than Delta. The study that analyzed 52,297 Omicron cases and 16,982 Delta cases in Southern California between Nov. 30, 2021, and Jan. 1, 2022 demonstrates that it is 91% less likely to die from Omicron than from Delta.

6. There are simple preventive and early treatment protocols for Omicron, explicitly described by prominent doctors. Internationally renowned virologists, immunologists, and epidemiologists consider Omicron as a natural vaccine which will lead to natural herd immunity required for restoring normal life in our society.

7. The proposed Bill has intentional or unintentional goal to create a police state with a full control over MoCo residents. We know from history that totalitarian regimes always fall.

Yelena Gakh

To whom it may concern,

I am opposed to the vaccine passport. As a child therapist, I have seen the negative effects of the past two years. Kids are suffering from increased anxiety and depression. Physical exercise and extracurricular activities are beneficial for both their physical and mental health. By including gyms, fitness centers, dance studios and pools, you are voting to keep children out of these activities unless they are vaccinated. Children have been at low risk from Covid throughout the pandemic. They have suffered through virtual learning and isolation. Your passport would unnecessarily prolong this isolation. Furthermore, there is no evidence that it would even improve any metrics in our county. Other cities have tried this; and they had the same Omicron spike that we have experienced. Look at NYC or Israel's data for proof. They are also highly vaccinated like us, and still have very high case numbers. Furthermore, per the CDC, our children are not filling up hospitals. The people filling up our hospitals have co-morbidities that put them at increased risk. Please do not further any mental harm to our children by passing this passport. They deserve better.

Sincerely,
Abby McClintock

Hello,

My name is John. I am a life-so-far resident, I feel passionate about this and I thank you in advance for reading my letter and taking in consideration what my thoughts are towards the Vaccine Passport. I have lived in Rockville my entire life. I was born in Shady Grove Hospital in '85, grew up in Twinbrook, bought a house in Twinbrook & I will probably spend my twilight years here as well. As big as the population has grown, I still sense a small-town charm here when I drive home from work. I have not been vocal to my local council in regards to my children's school policies, vaccines, business closing's then reopening's, masks on - masks off, etc. My thoughts have always been; You have an enormous amount of people to please and serve. I am just one guy with a beautiful wife & 3 children. My point I am meandering around to is, as much as I have seen Rockville and Montgomery County prosper and grow, I do not believe a Vaccine requirement in the form of a Passport is a good idea. In fact, I believe the Passport idea is a regression from our 'Most Progressive County in MD' nick-name (of which I personally am proud to hear us called).

I could, like Dr. Stoddard had mentioned he would in the meeting on January 11th bring you data that I have collected from the CDC to back up my claim. However, by the time it's compiled and displayed, it's just old data. It will be moot because we are in an age with access to ever changing data. Being as it is actually very simple to collect data from wonder.cdc.com and skew it to my view, I am no statistician. I do not have time to build a case that involves data that will then be scrutinized. Neither should Dr Stoddard, if I may say. Unless his doctorate in mathematics & statistics or works for Facebook, he should 'stay in his lane.'

What scares me and really does keep me up at night is the fact that our local government will in essence be requiring me & my family to get a vaccine in order to be a part of our community. It scares me that we could be headed to a more inclusive based society with an 'if'. To me, it seems like a vaccine mandate, but we are calling it a Passport. My children have had enough vaccine requirements for MCPS already, they do not need anymore. For example, in order for me to take my two daughters on a date to a restaurant and then the already empty and every other seat vacant movie theater, I would need to provide proof of vaccination for everyone by March 1st. Honestly, I never thought I would ever have to prove anything of the sort in my life. In other words, I would get turned away because 'we don't serve your kind here' if I don't have my phone on me and God-forbid, I leave one of my 7-year-old daughter's proposed ID card at home. That is just one selfish example, however. There are so many more real-life examples that do not involve myself or my family that I will not elaborate on, but know that this Passport will encourage.

What scares me is using quick witted and timely political 'state of emergency power' to increase restrictions that oddly seem to have ever-extending expiration dates. That alone, is an example of the regressive statement about the county I made prior. This ideology will almost be guaranteed to sift and wade throughout the community. However, this will be thought of, but never spoken of. Undoubtedly, this Passport idea will pass the vote and it will be easy to implement because of the technology that we have in our smartphones. People will easily and happily comply. More importantly to note, people will comply strongly out of fear and hope. The hope is this 'could be the last Covid Restriction' you place us under (it probably won't be) and the fear would be if they do not comply they will be persecuted, prosecuted, embarrassed, shamed & shunned by their neighbors (we do not serve your kind here,

again). Oddly enough, the government remaining seemingly bipartisan against Covid is now for community compliance and punishing people who are not vaccinated, nay - forcing people to vaccinate.

I ask myself daily, in what way is this considered effective to coerce the community without segregating it more? Haven't we been segregated enough? Has everyone already forgotten the 2020 rallies? Haven't we been 'socially distant' enough? Must we continue to comply with a seemingly endless increase in restrictions on our daily life? Are we so privileged in Montgomery County that we will only accept patronage from people who are vaccinated forever? Are we so privileged that we will only employ people who are vaccinated forever? Is it a privilege to allow this legislature from our government and we should be blissful & thankful? Must we always comply for the greater good of the community or face a fine? Or have to explain ourselves in public? Or is it a burden to let people choose to do what they want? Are Vaccine Passports an ultimatum in disguise? Is the fear of covid a burden on our society and we the people are to blame for viewing things opposite of the current normal? I could go on, but please note this in part thanks to the proposal to segregate the population over vaccination. 'We are all in this together, but only if you are vaccinated here in MoCo' is where I think we are headed and I do not think in this day in age 'but only if' is good thing anymore.

We can hope that the Vaccine Passports will improve our daily lives. We can hope that after two (going on three) years, this really is our last attempt with what seems like our endless supply of Hail Mary's to save our community of the vaccinated. But when is it time to move on? If you do move forward with Elrich's proposal, we can hope that these Passports will help boost our already extremely high vaccination rate and weed out the unvaccinated (sarcasm). Sorry for the bluntness but that's what is generally being said right now amongst the commonfolk. It disgusts me that people actually say that around here. I do not blame them. It really isn't their fault. They were not always this way; they were coerced into it.

I believe Passports will NOT help us with 'controlling' the virus, nor any other virus. The virus knows no borders (pun intended). In my opinion, the Passports will help us further chariot what some may call: a 'privileged' community in the eyes of our neighboring counties.

I fear that empowering people, governments, businesses and our community as a whole with a tool that highly suggests segregation without the word segregation is just what Montgomery County needs to keep on regressing into an inclusive (with a 'but') community. I know most people will say or think, "No, this will not be conveyed, written, or enforced in way to cause harm or segregate. We will make sure everyone gets vaccinated prior to this program going into effect." To assume with a generic thought or statement written one-way or another as a reason for allowing Vaccine Passports, does convey an assumptive expectation of mass compliance. This assumptive compliance implies 'writing off' any allowance of our residents saying the word 'No' or giving them the opportunity to make their own decision without fear of missing out and being a part of our not-so inclusive community. It is the complete opposite of democratic law (which is what we should be striving for).

Basically, this Passport program is almost a 'backdoor-way' to mandate a vaccine for all Moco residents and visitors who patronize our community. I cannot fathom how anyone would be able to effectively require a Vaccine Passport based off of the incoherent and ever-changing theory from The WHO & CDC of what our current vaccine status should be against any current variant in the future. Here is a current example: as of mid-January, the CDC says to get a booster while the WHO says to hold off. Yet, our

government is going to tell us what we 'really should be doing.' In short, we would base a law off an unproven theory. Mind-blowingly bureaucratically backwards.

You guys have been doing everything in your power to help. Credit is due for appreciation and I appreciate you. Passports could be another avenue of a pointless attempt at controlling a virus with just a little too much unchecked un-expirable power, even for us privileged in Montgomery County or any other county. We are not New York or California. We should not emulate who we do not want to become. I don't want live in New York and I do not want to live in California. I like Maryland and I like Montgomery, so far. For the sake of finding a better solution and stopping the data fear mongering, do NOT implement Vaccine Passports, please. Montgomery County is better than that, we are better than this.

Thanks, John Eckhardt

p.s. I'm vaccinated. My family is too. I didn't write you as the 'anti-vaxxer' I wrote you because I felt passionate about this

Dear Montgomery County Councilmembers,

I am completely opposed to any vaccine mandates or passports for businesses and schools.

A mandate is clearly not needed as our citizens have done their part and gotten vaccinated. The pharma community has let us down with a product touted to be 95% effective, yet in reality is completely ineffective at stopping the current variant of Sars-Cov2. Unfortunately, this is how future evolution of the virus will unfold, with an endless immune escape from potential vaccines. Sars-Cov2 is not polio or the measles. It mutates, infects, and transmits too quickly to be controlled completely by vaccination.

The American Academy of Pediatrics (AAP), the American Academy of Child and Adolescent Psychiatry (AACAP) and the Children's Hospital Association (CHA) joined together to declare a National State of Emergency in Children's Mental Health in October 2021. COVID Has Been Overtaken by a Secondary Pandemic. Illness Anxiety Disorder, or "health anxiety." Specifically COVID-related illness anxiety disorder. According to Mayo Clinic Illness Anxiety is a needless worry about getting seriously ill. Montgomery County citizens suffers of MASS DELUSIONAL PSYCHOSIS.

Learning to live with reality-whatever that may be- is a necessary component of growth and emotional health. Failing in that task bodes a poor outcome for the kids.

Everything we did for the almost two years didn't work therefore lets try a totally different approach.

Please lets encourage happiness, friendships and health through exercising outdoor, eating organic food, sleeping 9 hours a night and taking vitamins and covid drugs available when sick.

Vaccine's passports/mandates would be discriminatory against those few unvaccinated people in our area and that's not what Montgomery County stand for it. We stand for unity and believe in acceptance!

Thank You,

Daniela D'Orazio

Dear Montgomery County Councilmembers,

As a fully vaccinated health professional living in Montgomery County, MD, I am completely opposed to any vaccine mandates or passports for businesses and schools.

It has become quite clear that the current vaccines available to the public lack the effectiveness and duration to be capable of slowing Sars-Cov2 infections. Our county is the most vaccinated in the country, yet our current rate of infection is among the highest. One day last week approximately 1/200 citizens tested positive for Sars-Cov2. Even Bill Gates declared that the current vaccines are not capable of controlling infection. <https://www.theedgemarkets.com/article/current-covid19-vaccines-missing-two-key-elements-says-bill-gates>. Dr Fauci now says Omicron will find just about everyone. <https://www.cnn.com/2022/01/11/health/us-coronavirus-tuesday/index.html>

WHO says that vaccine mandates should be a last resort to boost low vaccination rates. <https://unric.org/en/who-mandatory-vaccinations-are-a-last-resort/>. A mandate is clearly not needed as our citizens have done their part and gotten vaccinated. The pharma community has let us down with a product touted to be 95% effective, yet in reality is completely ineffective at stopping the current variant of Sars-Cov2. Unfortunately, this is how future evolution of the virus will unfold, with an endless immune escape from potential vaccines. Sars-Cov2 is not polio or the measles. It mutates, infects, and transmits too quickly to be controlled completely by vaccination.

Imposing restrictions on businesses and school children would be a symbolic gesture at best. The best scientific minds in our county must see that a vaccine mandate will not make these establishments safer. This became clear during the latest school board Zoom call where Executive Elrich and Superintendent Mcknight were both working from home ill with Covid despite vaccine boosters. Vaccine mandates will only harm our businesses economically and divide our community further. Many individuals have already had covid and prefer not to vaccinate with a product that will not prevent infection, despite any possible reduction in morbidity and mortality. My family and countless others will gladly take the 20 minute drive to Frederick and Howard Counties to patronize businesses that promote free choice of Covid protective measures.

Also, many of our children have already had Covid, yet they sit masked in school endlessly. They don't understand how this is helping anyone. They are masked and highly vaccinated, yet cases in schools are exploding. Please set a firm guidance for removing masks from our children and do not consider ineffective vaccination mandates for school attendance.

Sincerely,

Peter D'Orazio RPh.

January 13, 2022

Dear County Council,

Thank you for your service to our community. I am writing today to express my concerns about the resolution for vaccine mandates for some indoor businesses and community centers.

To give a little background about myself, I live in Montgomery County and work for Montgomery Parks as the Ice Skating Program Manager. We have worked throughout the pandemic in person since July 2020. Our workplace has had a mask mandate nearly the entire pandemic and we have a vaccine requirement for all staff and volunteers in place. I personally got a vaccine the minute I could find an appointment in April 2021 and a booster the minute I was due for it.

I am passionate about skating and adore sharing my love for skating with others (young and old). I have felt strongly that staying open (even with all the restrictions) gave many, many people an outlet throughout the last two years. It has kept children engaged with others at a time that they have needed it most, it's given adults an outlet for a physical and mental break from life, and it's kept people exercising. I personally have gotten hundreds of thank you's from skaters and parents for keeping the rinks running safely.

Unfortunately, not everyone has been willing to follow the county guidelines. Working in person in a community center setting has been extremely difficult for the last 22 months and has taken a toll on our staff both physically and mentally. It is unbelievably hard to get people to comply to county restrictions especially when they do not agree with them. In addition to all the thank you's I have also been yelled at thousands of times for asking someone to put a mask on; for telling a parent that we have a capacity limit, and they cannot come in to watch a hockey game; for not letting an adult hockey player use a locker room. Being in the DMV, we have many customers who come to our facility from outside of Montgomery County and they are not invested in following our county guidelines since they don't live here. I have left work many, many days feeling hopeless and defeated.

But this email is not just for you to feel sorry for me...this mandate will affect everyone who works in these service/retail fields. Our businesses have been restricted the most in all these county restrictions and we will not survive having to enforce these mandates. Our staffing levels are already stretched so thin that losing more staff will cause things to break. Since our county has such a high vaccine compliance, I cannot understand the purpose of this new mandate. It is not going to convince more people to get vaccinated; people have already made their minds up about that. These mandates are just causing more discord among the public. The first thought I had when I read about this mandate was "I am going to quit my job and move back to the Midwest." I am sure I am not the first or last person to have that reaction to this.

Our county has so many challenges facing it right now and it seems ridiculous to be putting things in place like this that have more negative connotations than positive. We don't have enough bus drivers to get kids to school. It's nearly impossible to schedule a covid test or get hands on an at-home rapid test. We have serious food insecurities in areas of our county. We are on the verge of a mental health crisis with our residents. At some point, I hope our county government can really shift their focus to the real needs of our community. A vaccine mandate for some indoor spaces in a county that has an over 80% vaccination rate is absurd when there are much bigger problems to fix.

Jennifer Cashen

Chevy Chase, MD

Dear Mr. Elrich and Council Members,

I am writing to share my concerns about your proposed vaccine passport mandate Agenda Item #2B which you will be considering on January 18th. I don't believe that you have allowed adequate time for the public and county residents to share their concerns about this proposed mandate as it was only introduced to the public agenda on January 11th. I have seen little media coverage of this issue and I believe that we need an open public debate/discussion. As things presently stand, I think few people in this county are even aware that this proposal is about to be voted on and possibly implemented as soon as January 22nd.

According to the coalition Informed Choice Maryland:

There is no scientific evidence supporting mandated vaccination for restaurants, bars, gyms or other similar facilities when it quite clear from the data that Covid-19 vaccines do not prevent transmission or infection with SARS CoV-2.

There is increasing scientific evidence that prior infection and recovery from Covid-19 confers robust, lasting protection against both infection and disease which is more effective than vaccine protection against disease.

There is ample evidence of risks associated with Covid-19 vaccines, as acknowledged by the CDC, to warrant accommodating patrons with the option to test for Covid-19.

To this I would add the following information from the Vaccine Adverse Events Reporting System or VAERS which was established in 1990 by the CDC (Centers for Disease Control and Prevention) and the FDA (US Food and Drug Administration) as a national database which tracks deaths and adverse events. It was established with the intent of serving as an early warning system for safety issues related to US licensed vaccines. VAERS is co-managed by both the CDC and the FDA <https://vaers.hhs.gov/about.html>

As of December 31, 2021:

21,382 deaths from the vaccines and 558,154 adverse events have been reported nationwide. Please see the following link for more information about the various kinds of adverse events that have been reported. It seems clear from this data that these vaccines are anything but safe and effective. For these reasons, I am opposed to the vaccine passport mandate that you are proposing.

<https://openvaers.com/covid-data?fbclid=IwAR3ixiLcZ0zJpJXDfh3hst9DAu14h01UC40vH5cAy2snHY0CVSka-pAkugM>

Thank you for your attention to this important matter.

Sincerely,

Tracey Butler

To the Montgomery County Council:

I would encourage the Montgomery County Council to reject the Vaccine Passport Requirement. While I am fully vaccinated, I have several concerns with this unnecessary and oppressive requirement.

Some people are understandably concerned about the rushed process to approve this “emergency” vaccine. While it is reasonable to require FDA-approved vaccines that have gone through the appropriate testing process, this is not one of them. I support the decision of each individual to decide whether they feel comfortable with regard to their own health.

Requiring vaccination passports is a frightening infringement on individual rights. “Show me your papers” brings scary images of totalitarian regimes whose aim is to coerce citizens into their way of thinking.

Introducing this legislation while businesses are just starting to recover from the mandated shutdowns by the government back in 2020 is unthinkable. As one business owner put it: “Battling enough as it is with staffing and everything, last thing we need is our government making more restrictions, making it even harder for other things. Again maybe if this county was highly unvaccinated but we are not, we are doing everything they’ve asked and now they just keep putting more layers in there and it’s just getting really old, to be honest with you,” said Sahakian, the owner of the Quincy pubs in the area as well as Title Boxing Club.” (1)

In Montgomery County, Maryland, 1,037,547 people (95.0%) have received at least one dose and 883,123 (84.1%) are fully vaccinated. County Executive Marc Elrich argues that if we do not have the passport mandate and DC does, their unvaccinated residents will come to Montgomery County for entertainment. But the DC vaccination rate is not much lower than Montgomery, currently 91% with one dose and almost 70% fully vaccinated. With such high compliance in both jurisdictions, why do we need such draconian methods to try and force compliance?

If this legislation goes into effect, when does it end? Will this be a never-ending requirement? Will businesses forever have to comply with this burdensome rule?

I would encourage the Montgomery County Council to forego this onerous regulation. Let individual businesses set their own policies with regard to vaccination requirements and your citizens make their own health decisions.

Lori McCarthy
Chevy Chase, MD

(1)<https://wjla.com/news/coronavirus/montgomery-county-maryland-covid19-pandemic-proof-vaccine-requirement-passport-bars-restaurants-gyms-executive-marc-elrich>



01/10/2022

To
Montgomery County Council,

Happy New Year. I hope everyone in the council had a great holiday season and were able to spend some quality time with family and friends. This new proposal for Vaccine Passport in Montgomery county as you can imagine is quite troubling for the hotel industry and other businesses alike.

First, let me acknowledge the excellent work that has been done in Montgomery County in getting the population vaccinated. It is truly an outstanding achievement that we are one of the most highly vaccinated counties in the country.

However, given that the virus now travels through the vaccinated population just as easily as unvaccinated albeit perhaps not affecting the vaccinated as seriously those unvaccinated, I see this proposal as doing nothing but put an undue burden on businesses that are already struggling.

Our hotels have been again severely impacted by the rise of Omicron cases and there is hardly any business coming in. If the vaccine passport is implemented, it will lead to further reduction in travel to the hotels in Montgomery county. This will again lead to more lay-offs and reduced hours for our workforce which will severely impact them. We are already grappling with higher costs due to inflation and shortages of products. This will be a double whammy for the staff.

When this mandate was put into effect for DC , several groups reached out to hotels in Montgomery County hotels and are trying to relocate from DC due to this mandate. These groups along with I'm sure those already booked in Montgomery County hotels will, I'm sure do the same and try to relocate if the County institutes vaccine "passports".

Given that there are no such mandates in place in our neighboring counties and states, including VA we will be sure to lose business as they relocate to those areas. Additionally, from a business operations perspective, trying to find and pay for the additional labor in a time of shortages and severe downturn of business would be extremely difficult especially for hotels which are open 24/7.

I request the council to not back this proposal.

Thank you,

VIVIN KURIAKOSE | GENERAL MANAGER
Gaithersburg Marriott Washingtonian Center
9751 Washingtonian Boulevard, Gaithersburg, MD 20878
T: 301.590.0044 M: 301.278.6433
www.marriott.com/WASWG

January 9, 2022

Dear Montgomery County Councilmembers,

While the intent behind the proposed vaccine passport is admirable, we as a county and as a nation are woefully beyond such measures. Montgomery County achieved one of the highest vaccination rates in the country before the rise of the omicron variant, and *still*, the virus got through. It's spread among the unvaccinated as well as the vaccinated-and-boosted, and it's already spread among workers this county needs to maintain basic standards of living—workers we once called “essential” but have treated as anything but.

Prior to this proposal, some local businesses already took it upon themselves to request proof of vaccination before granting entry or services, so the ad hoc approach to vaccine passports in the proposed regulation isn't even a novel form of protection. The County's proposal to exempt “pharmacies, medical offices, urgent care centers, and hospitals” and government offices or facilities providing public services from vaccine entry requirements also appears out of line with protecting workers that provide some of our most essential services. Furthermore, the other examples of vaccine passport programs included as part of this proposed regulation provide no evidence that vaccine passports, as implemented, provide much benefit beyond potentially containing the spread of Covid-19—which, again, has already happened.

As proposed, the use of CDC vaccination cards as appropriate documentation, while likely the most accessible and cost-effective option, makes the entire vaccine passport program highly susceptible to fraud, as text documents and digital photos are exceedingly easy to fake. Asking frontline employees to determine the validity of vaccination documents is not only unfair and impractical, but also perpetuates risks to their personal safety from noncompliant citizens, as such workers have already experienced for nearly two years since the start of the pandemic.

There do not appear to be any provisions for real incentives to comply or penalties for violating the regulation. Like Montgomery County's ongoing mask mandate, which persists on individual goodwill as much as self-preservation, the inconvenience and burden lay squarely on those who comply and not those that resist.

The citizens of Montgomery County need real protections based on real needs and not more lip service in the guise of public health.

- Please focus efforts to reduce or prevent transmission of Covid-19 on the subset of “covered establishments” listed in the proposed regulation as well as widely attended activities that are prone to super-spreader events, such as contact sports and widely attended conventions, where adequate mitigation (outdoor ventilation, proper masking, capacity limits, social distancing, etc) are either not possible or not being utilized.
- Please enact measures that incentivize business owners to temporarily close or reduce services when the safety of employees and patrons cannot be ensured.

- Please provide financial and material assistance to families to effectively isolate or quarantine for up to 10 days following a Covid positive test result and to individuals for a period of unemployment due to a Covid-related temporary business closure or reduction in service.
- Please enable on-demand virtual learning options so students with symptoms of illness, Covid or otherwise (per MCPS guidelines), are not penalized for recovering at home.
- Please enforce existing and future mandates and institute fines or other penalties to discourage and prevent violative behavior, and not just punish non-compliance in retrospect.
- Please enact sensible emergency measures to limit non-essential travel/activities during periods of high viral transmission and/or when key sectors, such as hospitals and emergency fire and rescue services, are operating under crisis conditions.

Montgomery County has the capacity to exemplify effective and humane measures to contain viral transmission and help bring an end to the Covid-19 pandemic. It is not enough to merely copy the muddy paths others have tread before.

Sincerely,
Karin Lee

Public Hearing on Vaccination Entry Requirement
Tuesday, January 18, 2022
Testimony

To the Members of the Montgomery County Council sitting as the Board of Public Health:

Re: Proposed Board of Health Regulation to prevent the spread of COVID-19 in the County, Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers, and Other Covered Establishments

Please add explicit language to the *Establishments Subject to Vaccination Entry Requirement* that will include the following indoor covered areas within multiunit residential buildings:

1. Fitness centers, including exercise facilities and group fitness classrooms
2. Indoor social gathering areas (clubrooms, etc.)

Thank you for your consideration of this addition that will protect the health of the many Montgomery County residents who reside in multiunit residential buildings and complexes.

Judith Rudolph

Dear Council members,

I urge you to adopt vaccine passport requirements and strictly enforce masking requirements for all retail businesses as well as restaurants and bars. Frontline workers need the county government to step up enforcement against individuals who are refusing to mask up in retail businesses and threaten the health and safety of retail employees and their families. Masking requirements are being disregarded by 5-10% of our customers at Home Depot Aspen Hill regularly. I urge you to mandate vaccine passports for entry into retail businesses.

Jared Hautamaki

Silver Spring, MD

I am writing against vaccine passports. I am vaccinated so that's not the issue. My reason is that the science no longer supports such a decision. While vaccines protected other people, there was some sense in allowing businesses to regulate who entered or didn't. With omicron, that is no longer true. Although vaccines protect the person who has them, that person can still be a carrier and so there is no more protection for others with a vaccinated person than with an unvaccinated one.

Another reason is that getting a medical or religious or other type of exemption seems to be an onerous and uneven process. I haven't seen any links to how to do it so I'm not even sure there is a method in place. I have a friend who was advised by her doctor to not get the vaccine because of her health issues. How does she go about getting an exemption? Is there a way to be certified as "safe to enter buildings" if one has already had the virus? How is that proven? Doctors don't let you come to the office and the test results are often just verbal or an at-home test. The whole question seems complicated and unnecessary at this point.

Please do not make an entire group of people into second class citizens with no real scientific justification. This will not help quality of life in our county and won't prevent spread of omicron (at least it didn't keep it from spreading in NYC where the passport was in effect as early as October and still is as far as I know). Please focus instead on how to live with the virus.

Barbara Zellers

I strongly oppose the Board of Health Regulation - Vaccination Requirements to Enter Bars, Restaurants, Recreation Centers, and Other Covered Establishments. The last 45 days in Montgomery County, and the world, unquestionably demonstrates vaccines and boosters do not stop the spread of COVID-19. We are 85% vaccinated in this county. And yet COVID spread like wildfire here. This happened throughout the country and the world notwithstanding the vaccination rates in communities. Within my own network, I know countless people who were vaccinated and boosted who contracted, and spread, COVID-19 in the last 45 days. Most notably, Governor Hogan and County Executive Elrich contracted COVID notwithstanding the fact that they were vaccinated and boosted. This Regulation is based on an erroneous predication that vaccines could stop the spread of COVID. The virus has changed. Vaccines provide protection against severe disease but do not stop the spread of COVID. New York City's vaccine passport system did nothing to slow the explosive spread of COVID there notwithstanding the fact that over 80% of all New York City residents are vaccinated. Given this new reality, you cannot in good faith move forward with a regulation that will divide our citizens into two separate classes without any benefit to stopping the spread of COVID-19. This is not the right tactic to convince county residents to get vaccinated. It is underhanded and authoritarian.

Moving forward with this Regulation will not only divide the citizens of this county, but it will harm businesses. Those who will not vaccinate themselves or their children based on their own assessment of their risk to COVID will go elsewhere to spend their dollars. Moreover, it will require businesses to confront patrons, adults and children, over their private medical decisions. These harms are obvious. When this Regulation was conceived, perhaps these harms were thought necessary to stop the spread of COVID. But now that we know the vaccines and boosters do not stop the spread of COVID, imposing these harms on the citizens and businesses of this county is completely irrational. How can you subject a child to being interrogated over their medical decisions when entering an establishment when the scientific and real-world evidence shows the vaccinated and unvaccinated children can spread COVID just the same? It is simply cruel to place children in that situation given the reality of what vaccines actually do.

I understand you are all under immense pressure to demonstrate you are doing everything you can to control COVID. Please understand that there are thousands of citizens in this county who accept the reality of the world we now live-in. COVID is endemic. No government official can stop the spread of a highly contagious air-borne novel virus that is spreading rapidly throughout the world. Please do not pass this Regulation simply to placate those who irrationally cling to the notion that you have any power to stop COVID or that the vaccines are impenetrable barriers that will bring us to zero COVID. You do not have that power. And the vaccines clearly will not stop the spread of COVID. I accept this reality and do not fault you for the daily COVID numbers. The number of citizens who accept the new reality grows daily and will support you when you reject this irrational Regulation. Moving forward with this Regulation in the face of irrefutable real-world evidence that it will not stop the spread of COVID will undermine your own authority. Should you pass this divisive Regulation, you will place yourselves squarely on the wrong side of history and do irreversible damage to this county.

Dear Council Members,

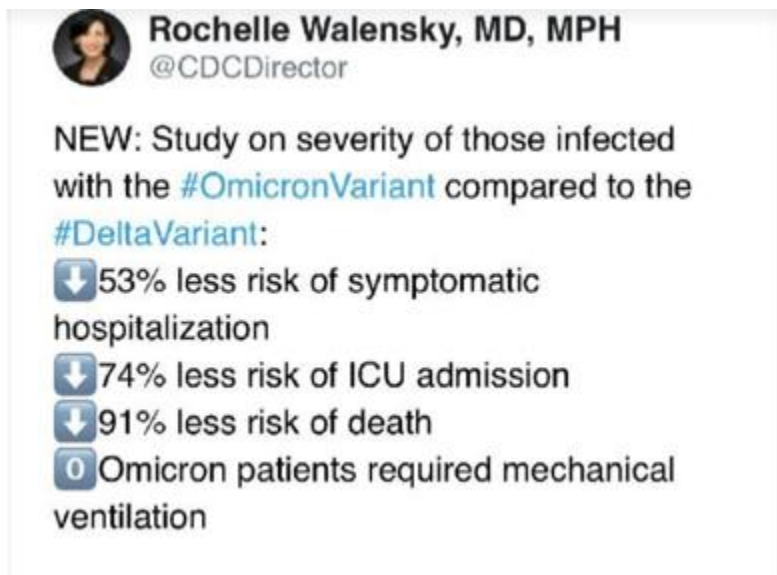
England is scrapping their Covid Passes at the end of this month because it is hard to justify a pass now that Omicron is subsiding. <https://www.dailymail.co.uk/news/article-10400971/Sajid-Javid-scrap-Covid-passes-fortnight.html>

Why then would Montgomery County put a Covid Passport in place at this time knowing this news with England? Omicron will have infected most everyone in the county very soon and therefore there will be no need to worry about the spread.

Bill Gates says once Omicron goes through a country the rest of the year should see far few cases and Covid can be treated more like the season flu.

[Bill Gates says 'COVID can be treated more like seasonal flu' after Omicron surge peaks \(yahoo.com\)](#)

In addition, the vaccinated and unvaccinated spread Covid at the same rate and the symptoms are less severe. Please see information from the CDC director which shows there is 91% less risk of death with Omicron and 0 patients requires mechanical ventilation.



Rochelle Walensky, MD, MPH
@CDCDirector

NEW: Study on severity of those infected with the #OmicronVariant compared to the #DeltaVariant:

- ↓ 53% less risk of symptomatic hospitalization
- ↓ 74% less risk of ICU admission
- ↓ 91% less risk of death
- 0 Omicron patients required mechanical ventilation

Let's not put undue hardship on our residents (vaccinated and unvaccinated) at a time when things are already so difficult. We already have a shortage of workers, inflation, difficulty with the school system; we do not need one more thing to make our life more difficult like carrying around a vaccine pass for no reason since a vaccine pass does not stop the spread of Covid.

Thank you for your support in these difficult times and please let's move on from Covid and work on improving our county in positive ways!

Sincerely a concerned 40-year county resident: Amy Sklut

Dear Council Members –

I am taking my time to write you and urge that you vote **AGAINST** the resolution to introduce Vaccine Requirements to enter establishments within the county. We have seen throughout the state, region and country that different measures have had negligible to no impact on the spread of COVID-19. From the very beginning the concern, rightfully so, centered around the healthcare system as a whole and making sure it did not become overwhelmed. Per the county's own dashboard, since April 1, 2020, a period covering 656 days, the hospitalization utilization has reached a "moderate" level for 8 days (1.22% of the days) and has never reached a level defined as "high." It's time to stop using conjecture as an excuse for unnecessary mandates. Sure, we don't know what will or could happen, but that's always the case and with everything. We must use as much information as we can get and make as educated a guess as possible with that information. I would argue the last 656 days give sufficient evidence that the county does not need to worry about the healthcare system being overwhelmed, at least not from COVID-19.

Furthermore, I would argue that the last 45-60 days along with announcements from the CDC, the county cannot stop the spread through the use of vaccines.

At this point with both a weaker Omicron variant being so prevalent, and the vaccine and boosters not showing significant efficacy against it anyway, what is the point of a vaccine mandate? What will it do? How would we define it being a success in a way different than how our current situation shows?

Additionally, COVID-19 has shown itself to follow the patterns of typical influenza viruses as far as seasonality is concerned. Again, per the county's own dashboard, cases per 100,000 have been declining since January 9th, and this trend will continue as we move closer to spring.

At the end of the day, there is no positive, only a negative to a mandate. People will still get sick, and the hospitals will still have capacity for COVID-19 patients if necessary. But a mandate infringes on people's rights and only adds more frustration to the situation. It forces people to do things to their body they're not comfortable with. It forces employees to make decisions between a paycheck and bodily autonomy. It forces employers to change how they operate and put more onus on employees to take on more work than they did previously. You cannot convince me at this point that a vaccine mandate is a net negative given what we know and have seen with COVID-19 spread and how the vaccines work which is why I ask you to please vote **AGAINST** the Vaccine Requirement.

Respectfully,
Greg Herbold

Montgomery County Council meeting January 18th, 2022

Testimony Against the Resolution To Adopt Vaccine Passports for Montgomery County Residents

As a resident of Montgomery County, I am opposed to the vaccine passports for the following reasons:

1. Requirement puts an undue hardship on restaurants, bars, fitness centers, & other establishments included to become the enforcers of this policy. Many of these establishments have suffered greatly during this health event and don't need another policy that would keep their potential customers from entering their businesses. These establishments will also lose business as many customers will drive to other counties or neighboring Virginia to patronize their establishments.
2. According to the CDC, the Omicron variant can spread the virus to others even if they are vaccinated so there is no need for the government to require vaccines or vaccine passports of Montgomery County residents.
<https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>
3. Requiring vaccine passports will have the effect of M.C. residents moving to other counties in Maryland or neighboring Virginia where this is no requirement. This will cause a loss of tax revenue to the county.
4. Most importantly it is morally wrong to exclude, divide, & punish fellow citizens because of their vaccine status. This should be a personal decision every individual makes according to their health situation and in consultation with their doctor. I find this resolution to be a form of discrimination against a large segment of our citizenry and I find it abhorrent.

A final comment, I did not see and end date to this vaccine passport requirement. If this resolution is adopted what are the guidelines/ metrics which allows the M.C. residents to end the vaccine passport/requirements

Vaccination Requirements to Enter Bars, Restaurants, Fitness Centers and Other Covered Establishments

County Council Meeting on 1/18/22

I am against this regulation for the following reasons:

1. Omicron is the dominant variant in the United States, Omicron does not respond to the standard 2 vaccinations. Pfizer CEO Borla says **2 vaccinations provide limited protection**.
<https://www.cnbc.com/2022/01/10/pfizer-ceo-says-two-covid-vaccine-doses-arent-enough-for-omicron.html>
2. This leaves the question of boosters. However the WHO has called for an end to COVID Boosters as the strategy is failing. Using old shots for new variants is not effective. So having **proof of vaccination provides a false sense of security** and may lead to a worsening of the spread.
<https://www.aljazeera.com/news/2022/1/11/new-email-piles-more-pressure-on-uk-pm-johnson-over-lockdown-parties>
3. Cases have already declined in the UK and it is beginning to open up. That may be happening in the US soon. If cases are the reason for this regulation. It may not be a strong one.
<https://www.bbc.com/news/explainers-52530518>
4. In Omicron **cases go up but hospitalizations and death go down**. Therefore this is not a reason to be more severe with people, it is a reason to open up as the UK has started to do. Why not make plans to deal with COVID-19 being endemic in

weeks or months instead? COVID-19 as a pandemic is so 2021. <https://abc7.com/endemic-when-will-the-covid-pandemic-end-omicron-variant-covid-19/11466588/>

5. Businesses and customers should be able to make their own decisions about how to handle COVID. We all have had 2 years of this. People can make their own decisions. If a business does not check for vaccinations someone concerned will not go there. Government does not need to be involved.
6. If you move forward with this decision, then only do so if you can clearly articulate when this regulation will be removed from the books.

HCCMC Statement on Introduction of a Board of Health Regulation to Prevent the Spread of COVID-19 in Montgomery County

Date prepared: January 14, 2022

Council President Alborno and members of the County Council:

The HCCMC opposes this proposed legislation.

The Hispanic Chamber of Commerce of Montgomery County wants to voice our great concern regarding this proposed legislation. I have carefully read it, and our member business owners met to consider its benefits and drawbacks. At first glance, for many of us vaccine proponents, this legislation sounded like a good idea. But upon looking at the resulting costly social and economic requirements and their relatively low benefit, we must speak out against this proposed legislation. Its negative consequences far outweigh the intended benefits.

In short, this legislation would require business owners to only accept patrons with vaccine certifications or official waivers, and it appoints the County's police department as enforcers of this proposed requirement.

To be clear, the HCCMC fully supports vaccination efforts, and the use of masks and social distancing. We support mandates for the use of masks and have as a Chamber participated with County efforts to increase acceptance of these safety measures. However, having read the proposed legislation, we strongly believe that insufficient thought has been given to the potential and likely negative financial and social impact of the proposed measures and the negligible positive impact of its enactment.

This legislation will further promote social inequities, setting up the opportunity to "tell" on someone you don't like. Because the Enforcement clause sets up the County Police as Enforcer, it allows a police officer to inspect stores and food establishments for infractions, questioning patrons, and possibly being perceived to target people of color, rightly or wrongly, asking some patrons to leave and fining business owners who may have left an unvaccinated patron in. Unintended targeting of sensitive populations will inevitably ensue, whether we intend it or not. The possibility exists, and the legislation facilitates it.

This legislation has too many loopholes to ensure only vaccinated people share public space. Vaccination certificates can be borrowed or made fake, whether printed or on the cell phone.

It allows acceptance of vaccination waivers, but there is no standard way for someone to show they have a waiver. Also, unless you require ID verification, how can you know that a vaccination certificate belongs to the bearer or is otherwise fake? And if identification is required to verify the vaccination certificate, what of people who do not have one? What about children? They may not be carrying ID or a vaccine card. Yet, they are the most likely carriers of COVID. Will we ban them next? You cannot be protected unless you ban the little ones.

Some alternatives can have a more positive and long-term effect, including better campaigns for vaccination, masking, and testing. Businesses could be encouraged to install air cleaners with HEPPA or UVC filters (many establishments have), and businesses can self-determine whether they wish to require their patrons to be vaccinated, advertising at the door or on the web their air filtration policy and or vaccination requirement policy, as a way to attract customers to their establishment. But this would be their choice, not legislated with punitive enforcement.

And is the County setting an example by mandating County staff be vaccinated when dealing with the public? the County would do well to work with businesses to develop strategies that make sense. The County can encourage safe practices, highlighting safe establishments, rather than enacting legislation that puts the police department and business owners in positions of being viewed as targeting segments of the population as “undesirable”, rightly or wrongly.

And when we have managed the pandemic, what happens to this legislation? It has no sunset provision. Will it become a tool to enable more discrimination?

As for the argument of managing understaffed hospital facilities, according to recent reports, vaccine compliance in the County is high, and our hospitals report that they are not facing the huge challenges of overwhelm that other areas in the US are reporting. While hospital staff shortages do exist, our hospitals report a plateau in emergency room traffic and admissions, with a likely decline over the next few months.

Please, Take this proposal off the table. Let’s formulate smarter longer-term solutions for a safer and thriving community.

Thank you for listening.

Jane Redicker Remarks for Council Worksession on Vax Passport – 01-18-22

Good morning. Thank you for including us on the panel. For the past two years, the Greater Silver Spring Chamber has been supportive of health measures that have minimized the impact of the COVID-19 pandemic. We care about the health and well-being of our member business owners, their employees and their customers – the public. We have consistently communicated with our members about testing, indoor masking mandates, and safety protocols. We have provided information about vaccine availability and encouraged members and their employees to get vaccinated. Our job is to provide our members the information they need to successfully operate their businesses.

When we first learned of this proposed regulation, less than two weeks ago*, we reached out to our member restaurants, theaters, hotels, gyms, and other businesses that are the subject of the proposal. ** POST WORKSESSION ADDENDUM: Subsequent to the worksession, I learned that a member of my staff was on the call last September where the idea of a vaccination passport was discussed. However, nothing was provided in writing and there was no follow-up after the phone call.*

My comments reflect what we heard from our members.

First, **they are skeptical the bill would accomplish its goals** -- increasing vaccination rates and reducing the spread of the virus.

- Montgomery County already has **highest vax rate** in the region, at more than 90% of residents five years and older, according to CDC. Our neighbors in DC, on which this proposal is based, is at 70%. They question how this requirement could possibly increase the County's vax rates. It's worth noting that the Lancet article, referenced in the packet, did not seem to support the notion that vaccination mandates increase vaccination rates in areas where there is already a high percentage of the population vaccinated.
- They also question whether it will decrease the spread, if it applies only here and in DC. Virginia is only a couple of Metro stops further away, Howard or Frederick counties a short drive. And our businesses compete with them.

Second, our members **cited the troubling question of the logistics of implementation** – requiring them to enforce public behavior.

- 1) The bill requires that a business “must not permit a guest, visitor, or customer (“patron”) to enter the indoor premises. . .without displaying proof of vaccination.” That literally means that the business has to post an employee at the door -- simply not practical for any business that doesn't already have a bouncer at the front door and is struggling to find employees.
- 2) The real requirement is unclear. The first section requires businesses to deny entry to the unvaccinated. But later, Line 99 of the resolution says that “Each instance that a covered entity fails to check an individual's vaccination status shall constitute a separate violation of this Order.” Is the violation for a business that lets an unvaccinated individual in, or is it a violation if the business doesn't check the status?
- 3) The resolution prompts more questions than it answers:
 - How can a business be responsible for verifying the validity of a vaccination card? They are easily forged, and businesses clearly don't have access to databases. Is there a penalty for this forgery?

- At what point in line for a fast-casual restaurant, where some patrons will be there for carry out, but others will eat in, does the business need to check vaccination status? When the food is ordered? With Silver Spring's ethnically diverse population, sometimes lacking English skills, the person who takes the order might not be the best choice. When it is picked up and paid for? What if the patron doesn't have the card with them?
- One of our movie theaters -- part of a national chain that does not require proof of vaccination nationwide -- posed another challenge. The vax card mandate won't be on the theater website, nor on third party apps like Fandango. A patron buys tickets, arrives at the theater, learns of the requirement, is turned away, and wants a refund. But the theater can't do so because the ticket was purchased elsewhere.
- Both our theater members asked about the viability of the section exempting "Individuals entering an establishment for a quick and limited purpose." What about those who enter a theater to browse before deciding on a movie, to pick up tickets for a later movie, to pick up a program guide, visit the concession stand, or just use the bathroom? Must they, and at what point, do they show proof?
- Some also mentioned that the idea of the "phased in" approach -- requiring various levels of vaccination at different times for different ages -- makes implementation way too complicated and difficult to enforce. They said, "If you are going to do this, please, please, make it simple for us."
- The bill's provision that exempts "a person entitled by law to a reasonable accommodation due to a medical condition or a sincerely held religious belief" seems unworkable on the face of it. How are businesses supposed to assess or verify any such claim? If you accept the person's word, do you allow them to come in, or not? Small restaurants don't have areas where these patrons can be separated from others. If you turn the person away, what is the "accommodation"?
- The bill is confusing on violations and penalties. The provision stating that "each instance that a covered entity fails to check an individual's vaccination status shall constitute a separate violation of this Order." Does this mean for each individual in a party? If so, what are the penalties? (There should be none.) How will a complaint be verified -- just by word of the complainant? Finally: what does the business do when a patron creates a confrontation? Who keeps the peace?

That said, if you cast aside the many concerns and criticisms of our members and move ahead with this proposal, the County MUST undertake the same kind of public education program it implemented with the mask mandate. The County must provide businesses with clear guidance and tools to help them comply, to demonstrate to their annoyed patrons that this is a County regulation and not a restaurant, or theater, or gym regulation. A County press release is NOT enough. We don't have local media anymore, so there is no way to publicize this effectively. And businesses should not be responsible for the cost of creating signage or other efforts to enforce the County's mandate.

The County must also clarify what is the requirement? Is it denying entry to the unvaccinated? Or, is it checking for vaccination status?

And, the County must set a sunset date when this is no longer required.

To many our members, the proposed regulation creates for them more trouble and problems, and does little, if anything, to achieve the stated goals. They have asked that we ask you to oppose it.

MHILA
Maryland Hotel
Lodging Association

Date: January 19, 2022
To: Montgomery County Council Members & Administration
From: Amy Rohrer, President & CEO, Maryland Hotel Lodging Association
Subject: Proposed proof of vaccination requirement for certain establishments

We appreciate the opportunity to provide feedback on this issue and hope the industry's concerns will be addressed if the Council chooses to move forward.

Please see below for our response (in italics) to questions posed via Craig Howard's email to Amy Rohrer on 1-13-22. Additional comments were offered by Amy Rohrer during the worksession on 1-18-22.

Please contact Amy Rohrer if further information is needed. She may be reached via email to amy@MDLodging.org or phone 410-974-4472.

Respectfully submitted,
Maryland Hotel Lodging Association

1. In general, how does organization or members of your organization feel about the proposed proof of vaccination requirement for certain establishments?

The health and safety of our hotel employees and guests is a top priority. It always has been and always will be. We have balanced health & safety with operational needs throughout the pandemic for nearly two years now.

There are three main concerns we have heard from members in Montgomery County and from hotels in jurisdictions that already have vaccine passport requirements in place.

- 1. This requires hiring additional staff that we cannot find NOR can afford.*
- 2. Business moves elsewhere – to areas that do not have vaccine passport requirements - or is postponed. Montgomery County hotels cannot afford to lose any more business.*
- 3. If implemented the proposal would require us to put our employees in a position of enforcement – a difficult position that we would prefer not to put them in.*

2. What do you anticipate would be required of covered establishments to be able to implement the proposed regulation if adopted?

1. *Legal counsel would need to review and advise individual hotels on what is required.*
2. *We would need to train staff in new protocols and de-escalation.*
3. *We would need to hire additional staff to check vaccine status.*
4. *Schedules may need adjusting to ensure sufficient coverage with adequate notice given to staff.*
5. *Signage, which may require brand approval, would need to be implemented in various areas of the hotel: the entrance, the gym, the pool, restaurants, breakfast bars, etc.*
6. *We would need to work with meeting planners to notify event attendees since hotels don't receive attendee lists with contact information from them in advance.*

3. If your organization/members of your organization have voluntarily implemented proof of vaccine requirement, do you have any feedback on how that has worked in practice?

We as an industry strongly encourage vaccination among our associates and guests, and international travelers must be vaccinated before they can fly into the U.S.

Do you have any feedback from the perspective of covered establishment on how proof of vaccination requirements are working in other jurisdictions?

1. *Clear communication from the outset is needed to avoid confusion, especially regarding a meeting planner's role vs. hotel.*
2. *Staffing shortages exacerbate our ability to carry this out.*
3. *Hotels are losing more business as meetings are postponed or moved to areas that don't have such requirements.*
4. *Exemptions in DC (as proposed in Montgomery County) are allowed for health or religious reasons and trigger the requirement for a negative test. Testing shortages have resulted in challenges and the guidance (below) has created confusion. Exemptions are especially difficult to enforce. Hotels have tried to have tests on hand, but this is an additional expense when revenue is down and has proven difficult in light of testing shortages.*

DC Guidance: [DCHealthVaxDCGuidanceFAQ1.14.22.pdf](#) Patrons who have and show documentation of medical or religious exemptions from the COVID-19 vaccine (such as a note from a medical provider or attestation from the patron that they have a sincerely held religious

belief) must provide a negative PCR or antigen test within the last 24 hours.

4. Do you have any suggested amendments or changes to the proposed proof of vaccination regulation that might make it more effective and/or simpler to implement from the perspective of a covered establishment?

- *We appreciate the stated intent that this is NOT to capture hotel guests checking into rooms. However, what is the county’s definition of “hotel common rooms”? (p. 3, line 22) Could this inadvertently trigger a requirement to verify vaccination status of everyone who walks into a hotel?*
- *Limit the mandate in scope to higher-risk settings, where mask usage isn’t as strong. Avoid lumping in conventions and meetings within hotels where food is not served and masks are worn the entire time.*
 - *(Chicago language, p. 30 in Montgomery County packet) SECTION 1. ... “Covered Location” means the following: 1) Establishments where food or beverages are served, including but not limited to restaurants, bars, fast food establishments, coffee shops, tasting rooms, cafeterias, food courts, dining areas of grocery stores, breweries, wineries, distilleries, banquet halls, and hotel ballrooms.*
- *Hotel gyms should be excluded (masks are required).*
- *The last thing you want to create is bottlenecks at registration. It’s important to give the ability to meeting planners to verify vaccine status in advance of the event/meeting rather than on-site. Hotels also don’t get full attendee lists, including contact information, in advance from the meeting planner. So we’d prefer to have meeting planners do this in advance of the event and have the language allow/encourage that. (Clarification from the outset is helpful.)*
 - *(Chicago language, p. 31 in Montgomery County packet.) SECTION 2. Notwithstanding any other provision of law, a covered entity shall not permit any patron to enter the indoor portion of a covered location without displaying proof of full vaccination. Additionally, any individual over the age of 16 shall provide identification bearing the same identifying information as the proof of full vaccination. A covered entity may in the interests of efficiency allow patrons to provide the requisite proof prior to entry, either directly to the covered entity or through an intermediary such as an event planner.*

- *Give businesses enough lead time – 30 days minimum requested by hotels (King County ,WA gave 39 days' notice for businesses to implement it)*
 - *Need to train staff (protocol, de-escalation).*
 - *Hire additional staff*
 - *Adjust schedules (sufficient notice to employees)*
 - *Legal counsel needs to review*
 - *Communicate to guests & MEETING PLANNERS*
 - *Signage needs to be implemented and often approved by brands.*
- *Allow for both FDA and World Health Organization -authorized vaccines to suffice (allows us to keep international travelers, obviously dependent on federal regulations)*
- *Set an end date (renewable if necessary) similar to King County, WA's: "[this order] will remain in effect for 6-months, until March 16, 2022, and [be]reevaluated at that time, or sooner based on the status and impacts of the COVID-19 outbreak in King County."*
- *Workers at these establishments are being put in a position of enforcement. Addition of increased civil penalties for people who assault our staff would be helpful.*
- *Notice to cure standard before penalties.*
- *Signage template provided by the county would be helpful to some hotels.*

January 18, 2022



Board of Health Regulation - Requirements to Enter Bars, Restaurants, Fitness Centers and Other Covered Establishments

Dear County Council:

Given the devastating impact of COVID-related shutdowns and operating restrictions on the restaurant/foodservice/hospitality industry during the early days of the pandemic, we hope County officials continue to avoid re-imposing capacity limits/seating restrictions because many in our industry cannot withstand it again. We want to keep our employees working and provide safe environments for our staff and customers. However, we also need to ensure that indoor dining customers are not subjected to overly onerous proof of vaccination requirements and related service delays that could cause some to avoid indoor dining altogether.

We have received mixed feedback from our County restaurant members about the proposed proof of vaccination requirement for indoor dining, and many questions remain unanswered about related details. If the County Council, acting as the Board of Health, intends to adopt such a requirement, we would request that industry feedback and concerns be addressed to make such a requirement more workable for our industry and the customers we serve.

1. We strongly believe that the metrics for lifting any proof of vaccination requirement must also be clearly specified in the regulation. Such a requirement cannot be in effect indefinitely. We leave it to County health officials or the Board of Health to decide which metrics will be used, but it should be specified. If such metrics are met before the effective date of any proof of vaccination requirement, it should not take effect.
2. Given the differences in operations among the various segments of the restaurant industry (full-service, fast-casual, quick-service, etc.) and related staffing needs, businesses should be allowed flexibility in determining the point at which proof of vaccination is verified. Businesses that can position hosts at the entrance can verify proof of vaccination for dine-in customers upon entry. Businesses without a host station may choose to verify proof of vaccination at the table or ordering counter. And it could also vary depending on circumstances and staffing. On a related note, some of our restaurants have asked whether the County can provide assistance to businesses to help cover the cost of any additional staff needed to enforce such a County requirement. We have heard from restaurant members who also have District of Columbia locations that additional staff has been needed to enforce the requirement there.
3. There is significant concern about medical and religious exemptions. If proof of negative COVID test will be required for indoor dining customers entitled to such an accommodation, it should be clearly stated in the regulation. However, businesses should not be required to request documentation from such customers to verify their medical or religious exemption. This could result in unnecessary confrontation.

4. Restaurants that serve families have expressed concerns about the proof of vaccination requirement applying to children under age 12. Although children under age 12 may be vaccinated, some restaurants are concerned that families with such young children may be deterred from indoor dining altogether to avoid what may be perceived as a hassle to show proof for their young children. The District of Columbia's requirement does not apply to children under age 12. And Baltimore City officials have no plans to include children under age 12 in a similar proof of vaccination requirement they are currently drafting.
5. During the introduction of this regulation, there was Council discussion about boosters. Until COVID vaccine boosters are included in the CDC's definition of "fully vaccinated," boosters should not be included in the County's proof of vaccination requirement. Because individuals become eligible for boosters at different times, it will be challenging for employees to determine whether customers are overdue for boosters. The District of Columbia's requirement does not include boosters. And Baltimore City officials have no plans to include boosters in the proof of vaccination requirement they are currently drafting.
6. Because implementing a proof of vaccination regulation requires more planning, training, notice and related guidance, we request that businesses be given at least two weeks to prepare before it takes effect. The District of Columbia announced plans on December 22nd for its proof of vaccination requirement effective on January 15th.
7. The "*Individuals Exempt from Vaccination Entry Requirement*" specified in the regulation should also be included on the "*Signage Requirement*" that covered facilities must prominently post at their entrances: *Individuals entering a covered establishment for a quick and limited purpose (for example, placing an order for takeout, picking up an order, or making a delivery); or, A person entitled by law to a reasonable accommodation due to a medical condition or a sincerely held religious belief.* Otherwise, such potential customers may be unaware of these exemptions.
8. Any related compliance guidance that is subsequently issued by the County regarding the proof of vaccination regulation should not establish any additional requirements not authorized by the Board of Health regulation. This has been an issue of concern in the District of Columbia.
9. We appreciate that the proposed proof of vaccination requirement does not apply to employees. There is concern that such a requirement for employees could exacerbate the staffing shortages our industry is already experiencing. The District of Columbia's requirement does not apply to employees. And Baltimore City officials have no plans to include employees in the proof of vaccination requirement they are currently drafting.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Melvin R. Thompson". The signature is written in a cursive style and is followed by a long, horizontal, slightly wavy line that extends to the right.

Melvin R. Thompson
Senior Vice-President

**GREATER BETHESDA CHAMBER OF COMMERCE
PROOF OF VACCINE REQUIREMENT RESOLUTION
ORAL COMMENTS AT COUNTY COUNCIL WORK SESSION**

January 18, 2022

- Thank you. Ellen Coren, Chesapeake Public Strategies. Here today on behalf of the Greater Bethesda Chamber as the volunteer Vice President of Economic Development and Government Affairs.
- Thanks to Council President Albornoz for holding this work session.
- Also want to thank Dr. Earl Stoddard and Jake Weissmann for working with us since the resolution was introduced.
- I'll speak to overall concerns that our members have expressed to us, then discuss some recommended amendments.
 - Even with these amendments, we remain concerned about the imbalance we see between the cost of this proposal and the limited actual benefits it may produce, given our very high vaccination rate.
 - We have coordinated our comments with the Greater Silver Spring Chamber, so we are in agreement with Jane Redicker's comments today.
- We understand the desire to keep our community safe and this is a priority for us as well. Through our Just Mask It campaign, our Chamber worked hard to help businesses implement the mask mandate and encourage their patrons and workers to comply.
- The resolution describes the mandate as a way to avoid closing businesses or imposing capacity limits. To that statement, our members say, "Please don't help us. You don't understand how our businesses operate; you don't know our unique challenges."
- We heard businesses testify just now about their challenges with severe labor shortages. This resolution exacerbates that problem.
- Today's packet includes examples of major cities that have instituted a proof of vaccine mandate. These are cities - not communities like Montgomery County.
 - For example, we don't have bars in the County. So, no one is already at the door carding people that can just add one more card check.
 - Those cities also have much lower vaccination rates than Montgomery County. New York, for example, had a rate only in the 60's when they

imposed the mandate. They had much room for improvement. This isn't the case in our County where 95% of residents have at least one dose of the vaccine and about 85% have the second dose.

- There's the practical reality to consider. Our member hotels saw their business increase when DC passed its proof of vaccine mandate and people moved their events from DC to Montgomery County. They began losing business to Virginia when people learned that our County was considering a similar law.
- With this resolution, the onus is on establishments to find reasonable accommodations for select unvaccinated people. How does a restaurant do this? Seat them outside in weather like we have had this week? Block off precious square footage, just in case they show up? And how do you decide which employees you will knowingly expose to unvaccinated patrons?

Having said all that, we have several amendments to suggest:

1. Push back the implementation date. We don't believe the County will be able to provide the support and resources that businesses will need in so short a time. And the businesses need time to gear up, figure out the staffing and train employees.
2. Rather than put the onus on the establishment for screening guests at an event, we suggest making that the responsibility of the group or person that is actually hosting the event. You may recall that volunteers screened guests at the December Committee for Montgomery Breakfast and it worked well.
3. Speaking of hotels, let's make it clear that the resolution does not apply to overnight guests. The way the resolution reads now, the hotel would be required to post people at every entrance, just to check the status of any person who enters, regardless of why they are there.
4. Determine a sound way of showing a medical or religious exemption, perhaps requiring the unvaccinated person to produce a document certifying that the person is exempt.
5. Include a sunset provision in the resolution.

Please keep in mind that even with these amendments, we remain concerned about the impact of this legislation on our members, as compared to what we see as limited positive impact on the community.

We look forward to continuing our discussions with the County Executive and the Council.

Thank you.