



**CITY COUNCIL WORKSHOP  
MEETING TO BE HELD REMOTELY**

**September 8, 2021**

**4:00 PM**

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403A, that authorizes cities and towns to conduct meetings online. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to [portlandmaine.gov/livestream](https://portlandmaine.gov/livestream) the next day. For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit \*9. You will be unmuted by the host when it is time for public comment.

**ZOOM INFORMATION:**

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82388661337?pwd=eGhyYUFwK2F5MEdHZlllExJQUVaZz09>

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**AGENDA ITEMS:**

Discussion of Emergency Proclamation amendments including, but not limited to, potential mask mandate, etc.





Health & Human Services Department  
Kristen Dow, Director

## MEMORANDUM

**To: Jon P Jennings, City Manager**

**From: Kristen Dow, Director of Health & Human Services**  
**Tina Pettingill, Deputy Director of Health & Human Services**

**Date: September 1, 2021**

**Re: Staff Recommendations for City of Portland Indoor Mask Mandate**

At the August 23rd City Council meeting, it was requested that staff from the City's Health and Human Services Department provide information on transmission rates and the recommendations on a mask mandate in the City. Since that time, staff from the HHS Department have reviewed local, state and national data, trends and policies, consulted with the Maine CDC, and reviewed recommendations from local area hospitals. From this research, the following information was gathered:

- With few exceptions, Cumberland County has been wavering between substantial and high transmission rate throughout August.
- Even with a relatively high vaccination rate in Cumberland County (83.4% of eligible populations fully vaccinated), the County positivity rate hovers between 2.5-3%, rising from 1% earlier this summer. Given new evidence on the B.1.617.2 (Delta) variant, as of August 13, 2021, the CDC [recommends masking](#) when indoors for vaccinated and unvaccinated individuals. "If you are fully vaccinated, to maximize protection from the Delta variant and prevent possibly spreading it to others, wear a mask indoors in public if you are in an area [of substantial or high transmission](#)."
- CDC recommendation includes K-12 school age children, recommending universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.
- Maine CDC stated that they would not take a specific stance on a mask mandate but urged the City to follow US CDC protocols which include masking in indoor environments.
- Masks have been proven to [reduce COVID-19 transmission](#). Masks reduce the emission of virus-laden droplets and the inhalation of these droplets by the wearer. "The community benefit of masking for SARS-CoV-2 control is due to the combination of

these effects; individual prevention benefit increases with increasing numbers of people using masks consistently and correctly.”

- Maine hospitals are at or near capacity with high new admission rates and a shortage of ICU beds to treat all diseases due to the COVID-19 surge. According to the 8/26 press conference, Maine Medical Center’s emergency department is full with patients having to stay in the emergency department because beds are not available.
- Maine hospital leaders pleaded with the general public through a [joint press conference](#) on August 26 to “get vaccinated if you are eligible, wear a mask indoors, practice physical distancing, clean your hands and use discretion when it comes to attending indoor gatherings.”
- Unlike earlier waves of this pandemic, young children (not eligible for vaccination) are impacted and being hospitalized.
- As of 8/31/21, seven states (Hawaii, Illinois, Louisiana, Nevada, New Mexico, Oregon and Washington), as well as the District of Columbia and Puerto Rico have mandated indoor mask use.
- [Over 40 cities and counties](#) across the US have issued, or re-issued, mask mandates including Raleigh, St. Louis, Baltimore, Atlanta, Lincoln and many others. Boston imposed a citywide mask mandate on Aug. 20 which covers all people over age 2 in indoor public places except when eating or drinking.
- 75% of Americans [support masking requirements](#) and these mandates have proven to be effective in [lowering community transmission of COVID-19](#).

## **HHS Staff Recommendations**

It is the recommendation of staff that the City adopts a mandatory indoor mask mandate in all indoor public places in the City of Portland. We recommend the mandate go into effect immediately and remain until the CDC releases new mask guidance or when the Cumberland County transmission rate falls into the low or moderate level for at least 21 consecutive days.

## **Support and Enforcement**

As with previous masking requirements, the City remains committed to supporting local businesses. Staff can provide signage and supplies to businesses as had been provided previously. A large [body of research](#) has shown that signs are effective in changing behavior in a variety of settings with between 75-96% of people complying with signage. Additionally, 85% of Americans are [currently wearing a mask](#) for all or most of the time.

If there are community concerns around non-compliance of the mandate, those complaints can be directed to our Local Health Officer (LHO) in the City’s Public Health Division.

**TO: Mayor Snyder and Members of the Portland City Council**  
**FROM: Danielle P. West, Corporation Counsel**  
**DATE: September , 2021**  
**RE: Survey of Recent State and Local COVID-19 Prevention Measures**

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The purpose of this memo is to provide the City Council with a summary of the research my office has conducted regarding what communities across the country are doing to prevent the spread of COVID-19 in the wake of a resurgence of cases fueled by the delta variant. In particular, the memo discusses three broad categories of policies, which include (1) face covering requirements, (2) vaccination requirements, and (3) gathering/occupancy limits. For each category, we have summarized the prevalence of its use across the country, provided examples of specific policies, and discussed how the measures are being enforced. Although the memo discusses a few state-level prevention measures, the primary focus is on local government ordinances, emergency orders, and public health guidance that may help to inform the City of Portland's future COVID-19 response plans.

For databases tracking state and local COVID-19 prevention policies, see (1) MultiState's [COVID-19 policy tracker](#); and (2) the National League of Cities' [COVID-19 Local Action Tracker](#), which can be filtered by city/state, policy area, and action type (i.e. administrative procedure, recommendation/proposal, etc.).

## **I. Face Covering Requirements**

As of September 1, 2021, [ten states and the District of Columbia](#) have imposed statewide mask and face-covering mandates. Currently, the key variable for mask requirements is whether vaccinated individuals are included in the requirement. In six (6) states (WA, NM, HI, LA, IL, DC), all individuals are required to wear masks indoors regardless of vaccination status. In three (3) states (CA, CT, NY), vaccinated individuals are exempt from the indoor mask requirement. In one (1) state (NV), indoor mask mandates are limited to counties with high transmission rates only. Finally, in one (1) state (OR), mask mandates apply to all individuals both indoors and outdoors.

In addition to the state-level mask mandates, MultiState has identified [approximately 70 county and municipal governments](#) that have imposed some form of mask requirement. Boston is the only locality in New England that has issued an indoor mask mandate that extends beyond government facilities, healthcare offices, and public transportation. Below, is additional detail on Boston's mask mandate, as well as the face covering requirements in Philadelphia and Baltimore.

- [Boston, MA](#): Effective 8/27/21, the Boston Public Health Commission issued a citywide mask mandate for all individuals over the age of five whenever they are indoors on the premises of a business, club, place of assembly or other place that is open to members of the public. The order does not apply to private businesses whose offices are not open to members of the public. The order was issued under the authority of both the Commission's authorizing statutes and the Commission's declaration of a public health emergency that was still in effect. To enforce the mask mandate, the order states that "all reasonable efforts will be made to secure voluntary compliance" but that the order may be enforced through the courts or with the assistance of other City of Boston agencies. The City has published an [FAQ page](#) with additional information on the mask mandate.
- [Philadelphia, PA](#): Effective 8/12/21, the Philadelphia Department of Public Health issued an amendment to the citywide emergency order imposing a face covering requirement for all individuals in any indoor setting unless a business operating at the setting requires everyone on site to be vaccinated and has instituted a reasonable procedure for confirming vaccinations status of staff, customers, and any other individuals present. To enforce the measure, the City is asking businesses requiring proof of vaccination to ask to see patrons' vaccination cards or a photo of the card on their phone. For businesses not requesting either a facemask or proof of vaccination, city inspectors can close a business and charge \$315 to reinspect and reopen operations. In rare cases, the health department can take a business to court and charge fines of up to \$2,000 per day. The City has published a [guidance page](#) that summarizes the law and provides resources on masking and vaccination requirements, checking for proof of vaccination, tips for asking patrons to mask, and restaurant-specific guidance.
- [Baltimore, MD](#): On 8/5/21, Baltimore's Mayor announced a new local health ordinance reintroducing an indoor mask requirement for all Baltimore City residents and guests, regardless of vaccination status. The requirement applies to all individuals over the age of 2 and the City's [FAQ page](#) specifies that masks must be worn by attendees during indoor live performances, by both players and attendees during indoor youth or amateur sporting events, and by all individuals inside health or fitness clubs. The FAQ page also specifies that the indoor masking order is "stricter than other jurisdictions" because "the Commissioner of Health for Baltimore City has more broad authority based on the City Charter." Enforcement measures for failure to comply with the Order includes a misdemeanor conviction and a fine of not more than \$200 for each offense plus \$50 for each day the offense continues. Further, the Commissioner may issue a notice of potential nuisance in the event of any health and safety hazard, which carries a fine of not more than \$1,000.

## II. Vaccination Requirements

In addition to the mask mandates that provide exemptions for individuals showing proof of vaccination, a few U.S. municipalities have begun requiring proof of vaccination for employees and customers at public indoor facilities such as restaurants, gyms, and theaters. Below is a summary of these policies in the three (3) cities where they currently exist.

- [New York, NY](#): In August, New York City's Mayor issued an Executive Order pursuant to the city's Emergency Executive Order in effect that mandates COVID-19 vaccines for employees and customers at public indoor facilities, including indoor entertainment and recreational settings, indoor food services, and indoor gyms and fitness settings. Individuals entering for a quick and limited purpose are exempted from the requirement. In order to comply with the requirement, each business must develop and keep a written record describing the entity's protocol for implementing and enforcing the requirements of the Order. Further the business must post a sign in a conspicuous place that is viewable by prospective patrons prior to entering the establishment that alerts them to the vaccination requirement. Any individual or entity that fails to comply is subject to fine of at least \$1,000 for the first offense; at least \$2,000 for the second offense within the same 12-month period; and at least \$5,000 for every offense thereafter. The City has [published guidance](#) regarding compliance with the Order.
- [New Orleans, LA](#): In August, the New Orleans Mayor issued updated Guidelines for COVID-19 Reopening that require individuals to provide either (1) proof of having at least one dose of a COVID-19 vaccine or (2) a negative PCR test taken no more than 72 hours before entry to any bars, restaurants, gyms, or entertainment/performance venues. The order applies to all individuals eligible to receive a COVID-19 vaccine. Proof of vaccination includes showing an original CDC vaccination card or a digital picture or photocopy of both sides of the card. To enforce the measure, any individual or business found violating the policy is subject to penalty of up to \$500 or imprisonment of several months. Further, the guidelines state that additional enforcement measures may include prohibiting a business from offering take-out services, revocation of a business's ability to open, revocation of any special event or live entertainment permits, revocation of certificates of registration, revocation of alcohol permits, and/or misdemeanor charges for owners, managers, and/or staff. The order specifies that only PCR tests are acceptable and antigen tests cannot be used. The City has [published guidance](#) on the Guidelines.
- [San Francisco, CA](#): On 8/24/21, the San Francisco Health Officer revised the city's emergency Health Order requiring proof of vaccination be shown for individuals over the age of 12 to go indoors at two categories of indoor businesses: (1) those that serve food and drinks (i.e. bars, restaurants, clubs, theaters, entertainment venues); and (2) fitness

establishments, including indoor gyms and yoga studios. Although negative tests results are not accepted in place of proof of vaccination, for the period between August 12-September 15, negative PCR/antigen tests were accepted to attend indoor events with more than 1,000 people in the case tickets were already sold. A violation of the order is considered to be a public nuisance and is punishable by fine, imprisonment, or both. The Department of Public Health is authorized to respond to public nuisances by issuing Notices of Violation and ordering premises vacated and closed until the owner, tenant, or manager submits a written plan to eliminate all violations and DPH finds that plan satisfactory. The city has [published guidance](#) on how to comply with the order.

In all three (3) of the cities that have imposed general public vaccination requirements, there are several acceptable ways an individual can furnish proof of vaccination. Below is a list of the acceptable formats under each of the municipal orders:

- New York: individuals may show (1) a CDC vaccination card (or a photo of one), (2) a health care provider-issued proof of vaccination, (3) a New York City COVID Safe Pass, or (4) a New York State Excelsior Pass.
- New Orleans: individuals can prove vaccination status using (1) a CDC card (can be a photo or photocopy but must include both sides); (2) an official record issued by another state, country, or the World Health Organization; (3) a vaccine trial record for individuals who participated in a clinical trial; or (4) the LA Wallet App.
- San Francisco: acceptable proof of vaccination status includes (1) a CDC vaccination card, (2) documentation from a healthcare provider, (3) a State-of-California-issued digital vaccine card; (4) a digital vaccine card issued by another State, local, or foreign governmental jurisdiction, or a digital vaccine record issued by an [approved private company](#).

As shown in the lists above, many cities and states are issuing digital health vaccination records (often referred to as “vaccine passports”), which can be displayed via a phone application and serve as one acceptable form of proof regarding vaccination status. Currently, 7 US states (CA, CO, HI, LA, MI, NJ, NY) have active vaccine certification apps while 22 state legislatures have issued full or partial bans on the systems. For an overview of the current usage and debate over vaccine certification apps, [see this article](#) published in the MIT Technology Review on 8/31/21.

### **III. Gathering/Occupancy Limits**

As of mid-August 2021, Hawaii was the only state or locality to reinstate gathering restrictions amid the resurgence of COVID-19 cases in the state. Under [Hawaii's Executive Order](#), (1) social gatherings are limited to no more than 10 people indoors and no more than 25 people outdoors; (2) patrons in restaurants, bars, and social establishments must remain seated with parties maintaining at least 6 feet distancing between groups with maximum group sizes of 10 people indoors and 25 people outdoors (masks must also be worn when not actively eating or drinking); and (3) the counties review proposals for all professionally sponsored events for more than 50 people and approval is required for the events. The measures set forth by the orders are enforced by the counties pursuant to county orders, rules, and directives that identify offenses and penalties for each county.

Although we were unable to identify any localities with new gathering/occupancy limits, some of the mask mandates and vaccination requirements establish rules based on gathering size/occupancy. For example, New Orleans's proof of vaccination requirement also imposes outdoor mask requirements for outdoor gatherings of more than 500 people if total attendance is more than 50% of the outdoor venue's capacity. Similarly, San Francisco's proof of vaccination requirement also applies to large outdoor events with 1,000 people or more.

### **IV. Chapter 2 of the Portland City Code**

It is important to note the requirements of Chapter 2 of the Portland City Code when reviewing any potential amendment to the City's emergency proclamation. Pursuant to that Chapter, the City Manager and the City Council have the ability to issue and extend an emergency proclamation declaring that an emergency exists within the City and then issue regulations that are necessary to, among other things, preserve the public peace, health and safety. Chapter 2, sections 2-406 and 2-408. Any violation of such a proclamation or regulation by any person, firm or corporation would be unlawful and could result in a fine of not more than \$500.00 and the costs of prosecution. Chapter 2, sections 2-412 and 2-413.

I will be available to discuss the specifics of this memo in more detail at tonight's City Council Workshop.