

EXHIBIT E

DECLARATION OF IMPASSE

INSTRUCTIONS: Complete in full, retain one copy and distribute in the following manner: A) File an original and one (1) copy with the Director of Conciliation, PERB, PO BOX 2074, ESP AGENCY BLDG 2, FLS 18 & 20, ALBANY, NEW YORK 12220-0074. B) Simultaneously serve one (1) copy upon the respondent.

Date: Sep 1, 2021

PUBLIC EMPLOYER

Name of Public Employer.....Bd. of Ed. of the City School District of New York

NAME, TITLE, ADDRESS, TELEPHONE AND FAX NUMBERS of the Representative to whom PERB should direct correspondence
Meisha Porter, Chancellor
52 Chambers Street, New York, NY 10007

(Email) mross@schools.nyc.gov (Telephone) 212 374 6000 (FAX) _____

EMPLOYEE ORGANIZATION

Name of Employee Organization.....The United Federation of Teachers

NAME, TITLE, ADDRESS, TELEPHONE AND FAX NUMBERS of the Representative to whom PERB should direct correspondence
Michael Mulgrew
52 Broadway, New York, NY

(Email) mmulgrew@uft.org (Telephone) 212 598 9215 (FAX) _____

IDENTIFYING PARTY DECLARING IMPASSE

Public Employer Employee Organization Joint Declaration

DESCRIPTION OF UNIT

- A - Number of employees in the unit: 180,000
- B - Included titles: Teachers
- C - Excluded titles: None
- D - Employer's fiscal year: 7/1 to 6/30 (Mo./Day/Yr.) (Mo./Day/Yr.)
- E - Effective date and expiration date of present agreement: 2/14/2019 to 9/13/2022 (Mo./Day/Yr.) (Mo./Day/Yr.)
- F - Date of recognition or certification of negotiating agent: December 1961

IMPORTANT DETAILS OF DECLARATION IMPORTANT

On a separate sheet of paper which should be attached hereto, write a clear and concise history of negotiations leading to this Declaration of Impasse. Include the number and dates of the negotiating sessions and specifically list all presently unresolved issues.

Pursuant to Article 14 of the Civil Service Law, as amended (Public Employees' Fair Employment Act), the undersigned hereby declare(s) that a state of impasse exists between the above noted public employer and employee organization within the meaning of Section 209 of said Act.

Signature of Representative Declaring Impasse: Michael Mulgrew President Title Sep 1, 2021 Date

If joint declaration, both representatives must sign:

Signature of Representative Declaring Impasse Title Date

Schedule A

Dates of Bargaining Sessions

August 25, 2021

August 30, 2021

STATEMENT OF IMPASSE

The United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO (the “UFT”), is the sole and exclusive bargaining representative of all nonsupervisory pedagogical employees, as well as certain others employed by the Board of Education of the City School District of the City of New York (the “BOE”). The UFT and BOE are parties to collective bargaining agreements for Teachers and Functional Chapters covering the period from February 14, 2019 through September 13, 2022.

The instant negotiations were prompted by the BOE’s unilateral promulgation of its “Vax-or-Test” policy for BOE employees in advance of the new school year, a policy slated to become effective on September 13, 2021, just days away. Exacerbating matters is that the City has now abandoned that policy – again without prior consultation or bargaining with the UFT – in favor of a draconian imposed policy that now mandates, as of September 27th, vaccination for all BOE employees, without any medical or religious accommodation or exception. The UFT and other municipal unions have attempted, for weeks, to arrive at a negotiated program to implement the City’s vaccine/testing policy, one that appropriately balances the need to address the advance of the Delta variant with the liberty interests and basic due process and collective bargaining rights of all teachers and other school-based workers. With the last-minute shift to an absolute mandate for all BOE staff, the UFT has continued to try to work with the BOE to tailor a policy that allows for medical and religious accommodation, while also respecting the due process rights of those who choose not to vaccinate. Recent bargaining sessions have demonstrated, however, that with the quickly approaching implementation date, the BOE has no

intention of budging from its inflexible stance or including the UFT in any meaningful bargaining concerning the implementation of the City's vaccination policy.

To be clear, the UFT supports vaccination and encourages all of its members to become vaccinated if they are able. Indeed, the UFT has among the highest – if not the highest – member vaccination rate of any municipal union in New York City at almost 80%. The UFT's first priority has always been keeping children and staff safe and schools open. Indeed, rigorous COVID precautions thus far have resulted in schools being among the safest public spaces in New York City – with an infection rate of less than 1% even when community infection rates are much higher.

These successes – and the UFT's willingness to negotiate a common-sense vaccination policy – make the City's sudden and rigid policy stance patently unreasonable. The vaccination mandate eviscerates the due process and collective bargaining rights of educators who could lose their livelihoods, health benefits and pensions, and disregards those who for whom vaccination is medically contraindicated or violates a sincerely-held religious belief of employees. The implementation of a vaccination protocol must be negotiated. To create a realistic and thoughtful policy with far reaching consequences for City employees, as we continue to manage the presence of COVID in our communities, requires two parties to work closely together and negotiate in good faith. The City has closed the door on good faith bargaining just as it had only begun.

PERB has the authority to apply the statutory impasse procedure to impasses, such as this, that arise in connection with an existing agreement.¹ The parties cannot bridge this divide

¹ See City of Newburgh, 15 PERB ¶ 3116, 3 (1982) (rejecting City's argument that impasse procedures do not apply to negotiations during the life of a contract and holding that "the impasse procedures specified in ¶ 209 of the Taylor Law apply wherever there is a statutory obligation to negotiate and the parties fail to reach an agreement."), aff'd 97 A.D.2d 258 (3d Dept. 1983), aff'd 63 N.Y.2d 793 (1984).

without PERB's assistance, and certainly not within the expedited timeframe that is necessary due to the belated issuance of the policies and the fast approaching commencement of the school year.

BACKGROUND

For the past year and a half, New York City educators have performed heroically to ensure that the children of New York City continue to receive a high quality education even in the most challenging of circumstances. They have worked tirelessly in remote teaching and have returned to school for in-person instruction when many employees in New York City and across the country have remained home. To overcome the harsh realities of COVID-19, our State and City governments invoked emergency powers and, even through the darkest days, worked with the UFT and their Union partners to protect City workers and serve City residents. Throughout the pandemic, the UFT was flexible with regard to many mandatory subjects of bargaining, and understood that, at many points, time was of the essence. Although the battle with COVID-19 has been costly – with too many lives lost – we have persevered through the worst and now attempt some semblance of a return to normalcy.

Within the past few months, a strain of COVID-19 known colloquially as the “Delta variant” arrived in New York (as well as across the United States), and quickly became the predominant version of the virus affecting City residents.² Some percentage of COVID-19 vaccinated individuals have been known to catch “breakthrough” Delta infections and – for at least a period of time – have viral loads as high as the unvaccinated. Accordingly, they can

² See COVID-19: Data, NYC Health, <https://www1.nyc.gov/site/doh/covid/covid-19-data-variants.page> (last accessed Aug. 20, 2021).

spread the virus to others.³ That said, even with the Delta variant, hospital admissions remain significantly below their 2020 peaks.⁴ An average of 1138 New Yorkers were hospitalized for COVID-19 from August 13 through August 19⁵ – in contrast with nearly 19,000 average daily hospitalizations in April 2020.⁶ The worst of the COVID-19 outbreak in New York City appears to be behind us.⁷

Yet, while the extraordinary powers granted to Governor Cuomo have been relinquished as the pandemic has subsided, and the State’s declaration of emergency – first announced on March 7, 2020 – ended on June 24, 2021, the City has chosen to remain in a state of perpetually renewed declaration of emergency. Mayor de Blasio has not rescinded the emergency powers he first invoked on March 12, 2020, and the City of New York continues to issue frenetic, and frequently changing decrees affecting the education staff. The BOE’s vaccination policy is the latest example of the ever-changing edicts.

Up until last week, for the start of school year, the State and City appeared to have settled on a “Vax-or-Test” policy, a mandate requiring all City employees (and vendors) to provide proof of vaccination to return to work or else submit to weekly testing. A July 27, 2021 draft letter from the Commissioner of the Department of Health and Mental Hygiene (DHMH) to the President of the Municipal Labor Committee outlined that the “Vax-or-Test” mandate would be

³ See Delta Variant: What We Know About the Science, Centers for Disease Control and Prevention (Aug. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

⁴ See Sharon Otterman, Here’s Who Is Hospitalized for Covid in New York City as Cases Rise, N.Y. TIMES (July 30, 2021), <https://www.nytimes.com/2021/07/30/nyregion/nyc-covid-hospitalizations.html>.

⁵ See Tracking Coronavirus in New York City, N.Y., N.Y. TIMES (Aug. 21, 2021), <https://www.nytimes.com/interactive/2021/us/new-york-city-new-york-covid-cases.html>

⁶ See Otterman, Here’s Who Is Hospitalized for Covid in New York City as Cases Rise, supra n.4.

⁷ See David Leonhardt and Ashly Wu, Has Delta Peaked?, N.Y. TIMES (September 1, 2021), <https://www.nytimes.com/2021/09/01/briefing/delta-peak-covid-caseload.html>

phased-in from August 2nd to September 13th and that the policy “requires all City employees and contractors to show either one-time proof of vaccination or a negative COVID-19 test once every seven days.”⁸ The policy was announced without bargaining with the UFT or any of the other municipal unions, disregarding the collective bargaining rights of all the City’s employees and their bargaining representatives, but it at least appeared to accommodate medical and religious exceptions and provide a path forward for non-vaccinated teachers to avoid discipline and keep their jobs. As recently as last week, on August 24, 2021, Governor Hochul affirmed that she would “pursue options to mandate vaccines for school employees *or require weekly testing in the absence of vaccines.*”⁹

Notwithstanding the validity of the “Vax-or-Test” mandate, on the very same day that the Governor supported its implementation, the City jettisoned a month-and-a-half of Vax-or-Test proclamations in an August 24, 2012 Order from the Commissioner of the DOHMH (the “Order”). The new Order gives school-based employees one option – vaccination. The severity of the Order is particularly confounding given that other recent DOHMH orders allowed alternatives to vaccination for City healthcare, residential and congregate setting employees. Subsequent State emergency regulations superseding those orders, too, provide for medical and other reasonable accommodations for those same employees. Not only does the City’s conduct in setting the policy violate its obligation to negotiate in good faith, but the Order itself – without any accommodation for existing medical reasons or religious beliefs –violates federal and state

⁸ The July 27, 2021 email and letter from OLR to Harry Nespoli is attached to the Declaration of Impasse as Exhibit A.

⁹ Press Release, “*On First Day In Office, Governor Hochul Announces Comprehensive Plan to Help Ensure a Safe Productive Return to Schools This Fall,*” August 24, 2021, available at <https://www.governor.ny.gov/news/first-day-office-governor-hochul-announces-comprehensive-plan-help-ensure-safe-productive>

law, including, among other things, the right to refuse unwanted medical treatment and Title VII's protection against discrimination based on religious practices.

All summer long the UFT has tried to work on the implementation of a sensible vaccination policy for New York City schools. On at least two separate occasions (and in many informal conversations prior to these sessions), the UFT, along with the other municipal labor unions, have attempted to negotiate, in good faith, aspects of the vaccine mandates. Yet, the City has refused, insisting that there can be no exceptions to the mandate – medical, religious or otherwise. In the latest bargaining session held on August 30, 2021, the City detailed how far the new policy goes in punishing teachers who may, through no fault of their own, be unable to take the vaccine.

Under the newly described policy, the City definitively said across the bargaining table that teachers with a legitimate medical exception to the vaccine will not be accommodated either by the initial testing option (the UFT would be open to twice a week testing) or the opportunity for those qualified to teach remotely (as was done last year) despite the City's acknowledgment that some students will continue to receive remote instruction. Instead, the UFT was told, these employees will be "permitted" to use their own cumulative absence reserve ("CAR"), effectively their accrued sick leave balances, for a period of up to 90 days, at which time they must go on unpaid leave and will lose health insurance. Educators who have a legitimate religious exemption will also not be accommodated and will not even be permitted to use accrued sick time. They will be limited to other accrued time (according to the BOE, because they are not sick) and then also stripped of pay and benefits. Those who choose not to vaccinate for other sincerely held reasons will be placed on immediate unpaid leave without health insurance for an indeterminate period of time.

The unreasonableness of the City's intransigent stance with regard to unvaccinated teachers is compounded by the existence of a host of remote teaching opportunities that unvaccinated teachers could perform within the system. There are estimated to be at least 5,000 students on "home instruction" this upcoming school year and there are a variety of other tasks – among them curriculum development, academic and social screening as well as school data management and analysis – that can be done outside the classroom setting. The City appears unwilling to place unvaccinated teachers in these types of roles, and instead insists on placing them on unpaid leave.

Moreover, this latest disclosure of the City's extreme plan to place educators on involuntary leave violates statutory and related contractual disciplinary provisions, and strips teachers of their core due process rights as public employees. All unvaccinated teachers who are placed on unpaid leave will be effectively suspended without pay without any of the due process protections codified in the State Education Law as well as the parties' collective bargaining agreement. These suspensions will also impact employee's pension rights and ability to accrue time, vest and/or retire as planned.

The Taylor Law does not permit such consequential policy decisions and potential disciplinary action to be implemented by mayoral edict. They must be negotiated. Given the current stalemate between the parties and the fleeting time before the upcoming school year, a Declaration of Impasse is the only way to bring the City to the negotiating table to properly bargain these important issues affecting hundreds of thousands of City teachers and public employees citywide.

Bargaining History

The initial rollout of what is now referred to as the “Vax-or-Test” policy applied only to City public sector health care workers, and was first announced on July 21, 2021 during MSNBC’s Morning Joe program, where the Mayor stated: “[w]hat we’re doing is mandate for the folks who work in our public hospitals and clinics, they need to be safe, the people they serve need to be safe. So, we’re saying, get vaccinated, or get tested once every week.”¹⁰ That day, the Commissioner of the Department of Health and Mental Hygiene (“DOHMH”) ordered vaccination or weekly testing for staff in public healthcare settings.¹¹

Less than a week later, on July 21, the Mayor proclaimed via press conference that:

on September 13th, which is the first full day of school, every single city employee will be expected to be either vaccinated or be tested weekly. This means everybody. This means obviously everyone who works in our schools, our educators and staff. It means the NYPD, the FDNY, it means all city agencies. It means people who work in offices and people work on the frontline.¹²

On July 27, 2021, the Office of Labor Relations (“OLR”) emailed the Chair of the Municipal Labor Committee (“MLC”), of which the UFT is a member and its President, Michael Mulgrew, is Executive Vice Chair, relaying a DOHMH draft letter that the Commissioner of DOHMH allegedly intended to send to all City employees that same evening.¹³ The draft letter outlined, in broad strokes, the “Vax-or-Test” mandate, stating:

¹⁰ Transcript: Mayor de Blasio Appears Live on MSNBC’s Morning Joe, City of New York Office of the Mayor (July 21, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/508-21/transcript-mayor-de-blasio-appears-live-msnbc-s-morning-joe>.

¹¹ See Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination or Testing for Staff in Public Healthcare Settings, New York City Department of Health and Mental Hygiene (July 21, 2021), attached as Exhibit B.

¹² See Transcript: Mayor de Blasio Holds Media Availability, City of New York Office of the Mayor (July 26, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/517-21/transcript-mayor-de-blasio-holds-media-availability>.

¹³ See Exhibit A.

all City employees¹⁴ and contractors will soon be responsible for meeting the COVID-Safe Requirement, to be phased in from August 2nd to September 13th. This policy requires all City employees and contractors to show either one-time proof of vaccination or a negative COVID-19 test once every seven days.

The MLC quickly responded to this unilateral change to the terms and conditions of employment for the City's entire workforce, and, having sought a discussion, met (virtually) on July 28, 2021 with two Deputy Mayors, the Commissioner of Labor, and several other commissioners and senior staff from various agencies, together with MLC officers, regarding the "Vax-or-Test" mandate.

The following day, Mayor de Blasio appeared on the radio station Hot 97 to announce further, unspecified edicts to supplement the "Vax-or-Test" policy:

Radio Host: You know other than the vaccination conversation, the getting back in schools in September conversation is coming up and, you know, people over 12, getting the vax and what's mandatory and not, I saw you talking about city workers are either going to need to get a mandatory vaccination or test every week. **Where is that plan at?**

Mayor: That's exactly where we're at. All city workers, it's phased in, starting with hospital workers. **They'll phase in over the next few weeks.** Everyone has to – if your city employee, that's almost 400,000 people, you have to either get the vaccination once, you know, done get fully vaccinated, meaning, you know, the two shots, be done with the full vaccination and you never have to test after that. Or if you are not yet vaccinated, you have to test every single weekend. **It's your responsibility to get those tests, and obviously give an update on what the tests say.** I believe that's going to really encourage a lot of people. **We are going to keep pushing mandates of all kinds,** and I'm urging the private sector to do the same.¹⁵

¹⁴ Although the DOE is not a mayoral agency and BOE employees are not City employees, the Mayor, as a result of mayoral control and the recharacterization of the DOE as a City agency, often refers to BOE employees as City employees and the policies applicable to City personnel are often also applicable to BOE employees.

¹⁵ See Transcript: Mayor de Blasio Appears Live on Hot 97, City of New York Office of the Mayor (July 29, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/529-21/transcript-mayor-de-blasio-appears-live-hot-97> (emphasis added).

Despite the UFT's efforts, through the MLC and independently, to work together on implementation of Vax-Or-Test, the City continued to unilaterally dictate the program. On August 19, 2021, the City – via OLR – sent Counsel to another MLC union an email attaching a 10-page document titled “COVID-Safe Requirement: Frequently Asked Questions” (the “COVID-Safe Requirement”) purporting to require for all City employees, *inter alia*:

- a. One-time verification of full vaccination or weekly records of a negative PCR test taken with the preceding seven days;
- b. “If an employee, volunteer, or intern chooses not to be vaccinated, they will have to submit evidence of a weekly negative COVID-19 test.”
- c. “If an employee, volunteer, or intern does not want to undergo weekly testing for any reason, they must get fully vaccinated.”
- d. “If an employee, volunteer, or intern has a medical reason for not complying with these requirements, they should be referred to the agency EEO office to review and discuss that information”;
- e. “Any employee who prefers to keep their vaccination status private can do so by providing a weekly COVID-19 PCR test and wearing a face covering.”
- f. Leave without pay for any noncompliant employees; and – in seeming conflict with that provision –
- g. “Employees who refuse to comply will be terminated.”¹⁶

The COVID-Safe Requirement also incorporates by reference mayoral Executive Order 75, which requires all new hires to “provide proof of having received at least one dose of an approved COVID-19 vaccine prior to beginning their employment (unless they have a reasonable accommodation).”¹⁷

¹⁶ The COVID-Safe Requirement, dated August 11, 2021, is attached as Exhibit C.

¹⁷ See Executive Order No. 75, City of New York Office of the Mayor (Aug. 2, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/075-000/executive-order-75> and Executive Order No. 76, City of New York Office of the Mayor (Aug. 17, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/076-000/executive-order-76> (amending Executive Order No. 75).

The MLC, on behalf of the UFT and other unions, sent a letter dated August 12, 2021 to First Deputy Mayor Dean Fuleihan, Chief of Staff and Deputy Mayor for Administration Emma Wolfe, and OLR Commissioner Renee Campion, underscoring the fact that the City had ignored the various proposals MLC had made during the virtual meeting on July 28, 2021, but expressing the Unions' desires to move forward expeditiously to arrive at a workable Vax-or-Test program.¹⁸

Shortly thereafter, the MLC received word that the City was considering abandoning the "Vax-or-Test" mandate before it had truly even begun, in favor of a pure vaccination mandate. Therefore, on August 17, 2021, the MLC sent an additional letter to First Deputy Mayor Fuleihan, Chief of Staff and Deputy Mayor Wolfe, and OLR Commissioner Campion, highlighting the capricious switch to a vaccination mandate before "Vax-or-Test" had even begun in earnest.¹⁹

This letter, too, went ignored.

On August 23, 2021, three weeks before the start of school, Mayor de Blasio and DOHMH Commissioner Chokshi announced a vaccination mandate for all employees in the City school district.²⁰ The following day, Respondent Chokshi imposed the Order, which requires all DOE staff; City employees who "work in-person in a DOE school setting or DOE building"; staff of City or DOE contractors "who work in-person in a DOE school setting or DOE buildings"; and "[a]ll employees of any school serving students up to grade 12 and any UPK-3 or

¹⁸ MLC's August 12, 2021 Letter is attached as Exhibit D.

¹⁹ MLC's August 17, 2021 Letter is attached as Exhibit E.

²⁰ See Mayor de Blasio, Chancellor Porter and Commissioner Chokshi Announce Department of Education Employee Vaccine Mandate, New York City Office of the Mayor (Aug. 23, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/578-21/mayor-de-blasio-chancellor-porter-commissioner-chokshi-department-education>.

UPK-4 program that is located in a DOE building who work in-person, and all contractors hired by such schools or programs to work in-person” to – no later than September 27, 2021 – provide proof that they (a) have been fully vaccinated; (b) have received a single dose vaccine; or (c) have received the first dose of a two-dose vaccine, and must additionally provide proof that they have received the second dose within 45 of the initial inoculation.²¹ The City has signaled that this is part of a larger effort to intensify vaccine mandates for all municipal employees in the days to come.²²

In an effort to bargain over the implementation of vaccine policy – bargaining which the City had previously indicated it was amenable to – the UFT participated in two bargaining sessions, one with all the MLC officers on August 25, 2021 and another, with just the UFT, on August 30, 2021. On August 25, 2021, union leaders, including UFT President Michael Mulgrew, met at City Hall and outlined the issues they saw for the implementation of a vaccine policy. Among the issues discussed were whether and, if so, how non-school personnel would be allowed inside the school building, testing for those applicable whether for pre-September 27th compliance or possible accommodation, as well as how the medical and religious accommodations would be implemented.

On August 30th, the UFT expected to continue a working dialogue on the implementation of a vaccination policy, but the conversation quickly hit major obstacles when the City stated unequivocally that there would be no accommodations and no exceptions to the vaccination

²¹ The August 24, 2021 Order is attached as Exhibit F.

²² See Eliza Shapiro, Educators Will Be First N.Y.C. Workers to Face Full Vaccine Mandate, N.Y. Times (Aug. 23, 2021), available at: <https://www.nytimes.com/2021/08/23/nyregion/nyc-schools-vaccine-mandate.html>.

mandate. With the sides so far apart and time clearly of the essence, the parties agreed that it was unrealistic that there was any basis for continued negotiation.

CONCLUSION

With the fundamental and urgent issue of whether unvaccinated teachers under specified circumstances will be permitted in BOE schools or allowed other work accommodation driving the impasse between the parties, agreement will not occur absent PERB proceedings. Accordingly, in the interest of achieving agreement on this time-sensitive modification, it is imperative that the parties be allowed to proceed to impasse on an expedited basis such that a solution can be reached for this coming school year.

Exhibit A

From: Renee Champion (OLR) <rcampion@olr.nyc.gov>
Sent: Tuesday, July 27, 2021 4:32 PM
To: Harry Nespoli - USA Local 831 (Pres831secy@usa-sbf.com) <Pres831secy@usa-sbf.com>
Cc: Klinger, Alan M. <aklinger@stroock.com>; Steve Banks (OLR) <sbanks@olr.nyc.gov>
Subject: [EXTERNAL] Letter to All Employees

Harry –
The Health Commissioner will be sending out a letter to all City employees this evening.

I have attached the letter below.

Please reach out to me if you have any questions.

-Renee

Letter to All NYC Employees from NYC Health Commissioner

I want to take a moment to thank all of you for your tireless dedication this past year and a half. Whether you're in the office or in our communities, New York City's employees stepped up to keep the city safe and moving forward. As a result, we made enormous strides in our fight against COVID-19, even before the vaccination stage of our response.

But as you know, nothing can provide a higher level of protection against the virus or do more to speed the city's recovery than vaccines, which are safe and lifesaving, and which we have made free and accessible all over the city.

To protect each other and those we serve, and to set an example for our fellow New Yorkers, the Mayor has announced that all City employees and contractors will soon be responsible for meeting the COVID-Safe Requirement, to be phased in from August 2nd to September 13th. This policy requires all City employees and contractors to show either one-time proof of vaccination or a negative COVID-19 test once every seven days.

Convenient and community-based vaccination sites are accessible via nyc.gov/vaccinefinder or by calling 877-VAX-4-NYC.

For those who choose instead to be tested weekly, [a diagnostic PCR test](#) -- which has the highest level of accuracy -- will be required. Most PCR tests must be sent to a lab for processing and come back within one or two days, but some are rapid and can yield a result while you wait. Either is acceptable for meeting the COVID-Safe Requirement. There are hundreds of PCR testing locations in the five boroughs; the list can be found at nyc.gov/covidtest. If you'd like to receive a test specifically at a City-sponsored site, that list can be found here: <https://www.nychealthandhospitals.org/test-and-trace/testing/>.

While testing is available it cannot replace the moral and health imperative to get vaccinated. I urge you in the strongest of terms: it is time to get vaccinated if you have not already. By not getting vaccinated you are putting yourself, your loved ones, and your City at risk. Vaccination is safe, effective, and free. It is the best thing we can do to keep each other, our loved ones, and all New Yorkers safe.

Thank you,
Dave A. Chokshi, MD, MSc
Commissioner
NYC Department of Health and Mental Hygiene

Exhibit B

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION OR TESTING FOR
STAFF IN PUBLIC HEALTHCARE SETTINGS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, pursuant to Section 3.01 of the New York City Health Code (“Health Code”), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends, and pursuant to Section 556 of the Charter and Section 3.01 of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible; and

WHEREAS, the Department’s clinical settings and the facilities and personnel of the New York City Health and Hospitals Corporation (“NYC Health + Hospitals”) provide health services to all New Yorkers seeking care and have a duty to take reasonable measures to reduce the risk of transmission of COVID-19 as part of their mission to protect the public health; and

WHEREAS, the Department’s clinical settings and the facilities and personnel of NYC Health + Hospitals serve individuals from all areas of the city, including those with the highest rates of COVID-19 infection and hospitalization, and the areas of the city with the lowest vaccination rates; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, pursuant to Health Code Section 3.07, no person “shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual . . . or . . . shall fail to do any reasonable act or take any necessary precaution to protect human life and health;” and

WHEREAS, pursuant to Section 3.01 of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. By August 2, 2021, the Department shall require from each staff member working in a clinical setting:
 - a. Proof of full vaccination, to be provided in a manner determined by the Department; or
 - b. For any staff member who does not provide such proof:
 - (i) Proof of a negative COVID-19 diagnostic test (not an antibody test) at least once per week, to be provided in a manner determined by the Department; and
 - (ii) Wearing a well-fitted face covering at all times while in the workplace, as provided in Department guidance or policies, which may also provide for the use of other types of personal protective equipment.
2. By August 2, 2021, NYC Health + Hospitals shall require from each staff member:
 - a. Proof of full vaccination, to be provided in a manner determined by NYC Health + Hospitals; or
 - b. For any staff member who does not provide such proof:
 - (i) Proof of a negative COVID-19 diagnostic test (not an antibody test) at least once per week, to be provided in a manner determined by NYC Health + Hospitals; and
 - (ii) Wearing a well-fitted face covering at all times while in the workplace, as provided in NYC Health + Hospitals guidance or policies, which may also provide for the use of other types of personal protective equipment.
3. Within 90 days, the Department shall report to the Board of Health on the implementation of the requirements of this Order and any recommendations to limit the spread of COVID-19 infection in health care settings.

For the purposes of this order:

“Clinical setting” means a Department clinic where staff members have contact with patients seeking medical opinions, services, or treatment. This Order applies to all staff members working in such clinics, including staff members providing administrative or technical support, and operational or custodial services at the clinic site, regardless of whether the staff member has direct contact with patients. This Order does not include services provided by the Department in schools or private homes.

“Full vaccination” means two weeks after a having received the second dose of a two-dose COVID-19 vaccine or two weeks after receiving a single-dose COVID-19 vaccine, except that, for the purposes of this Order, a staff member who provides documentation of having received one dose of any COVID-19 vaccine before August 1, 2021 will be considered fully vaccinated so long as, if such staff member received a two-dose vaccine,

the staff member provides documentation that the second dose has been administered before September 1, 2021.

“Staff member” is any full or part time employee of the Department or NYC Health + Hospitals.

This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01 of the Health Code.



Dated: 07/21/2021

Dave A. Chokshi, MD, MSc
Commissioner

Exhibit C

Issued 08/11/2021

COVID-Safe Requirement: Frequently Asked Questions

Under the COVID-Safe Requirement, employees must either:

- provide one-time verification that they are fully vaccinated; OR
- provide a weekly record of a negative PCR test as evidence that they are in compliance with the mandate.

Any employee who has not provided proof of full vaccination must wear a face covering, regardless of test compliance, unless they have been granted a reasonable accommodation by their agency's EEO office (or office/personnel providing the EEO function).

Policy Details

1. Which employees are covered by the COVID-Safe Requirement?

By September 13th, all full-time and part-time NYC employees who were hired before August 2, 2021 and all Contracted Employees interacting with the public or City employees are covered.

All Health + Hospitals employees and most DOHMH clinic-based employees are covered beginning August 2nd.

For City employees who were hired on or after August 2, 2021, please refer to [Executive Order 75](#), which requires all new hires to provide proof of having received at least one dose of an approved COVID-19 vaccine prior to beginning their employment (unless they have a reasonable accommodation).

City employees and employees of City contractors working in residential and congregate settings (defined below) pursuant to a City contract are covered, effective August 16th. See appendix for full list.

2. For the purpose of this policy, how are you defining "contracted employee" and "City contractor"?

For the purposes of this policy, a contracted employee and City contractor are, respectively, an individual or entity whose salary or funding is paid, in whole or part, by a contract with a New York City agency to perform work within New York City, and interacts with city employees or members of the public.

The City strongly urges organizations to adopt this policy as broadly as possible and cover of all of their employees, as the City has done. This policy is intended to keep your employees and the clients they serve safe, as well as streamline the implementation process.

3. Does this policy apply to the clients served by the City or its contractors?

No. This policy is specific to City employees and City contractors including their staff, volunteers and interns. City contractors should integrate this policy into their own COVID-19 return to office and health and safety policies. Clients must wear face coverings at all times.

Issued 08/11/2021

4. Does this policy cover interns?

Yes, interns, aides, and fellows that work directly with service recipients or in person with City employees are covered by this policy. All agencies should update their policies to include this requirement.

5. Does this policy cover volunteers?

Yes, volunteers who work directly with service recipients or in person with City employees are covered by this policy. All agencies should update their volunteer policies to include this requirement.

6. Does this policy extend to subcontractors?

Yes, this policy extends to subcontractors including building security, food service employees, and other subcontractors.

7. Does this apply to people who come on-site (e.g. vendors, home health aides) that do not have a contract with the City?

City contractors are responsible for verifying that all visitors that enter the contracted space and will be interacting with or in close proximity to clients or City employees are either fully vaccinated or have proof of a negative test result within the last 7 days.

8. Do staff interacting with the public have to wear a face covering, even if fully vaccinated?

Yes, staff interacting with members of the public – including employees, visitors, volunteers and interns of City agencies, City contractors and their subcontractors – must wear a face covering, even if they have submitted proof of full vaccination. Further, a face covering is required for all individuals at all times when present in a pre-kindergarten to twelfth grade school, public transit, homeless shelter, correctional facility, nursing home, or health care setting.

9. Will there be any medical accommodations for the program?

If an employee, volunteer, or intern chooses not to be vaccinated, they will have to submit evidence of a weekly negative COVID-19 test. If an employee, volunteer, or intern does not want to undergo weekly testing for any reason, they must get fully vaccinated.

If an employee, volunteer, or intern has a medical reason for not complying with these requirements, they should be referred to the agency EEO office to review and discuss that information.

10. Which vaccines count? What if the employee has been vaccinated with a non-FDA approved vaccine?

FDA-authorized vaccines will be accepted. Today, this includes the Pfizer, Moderna, and Johnson & Johnson vaccines.

It is possible that someone was vaccinated outside of the country with a non-FDA approved vaccine. Only vaccines listed for emergency use by the World Health Organization (WHO) are acceptable and the person needs to have received a complete vaccine series. The current list of vaccines authorized by the WHO for emergency use is [here](#).

Issued 08/11/2021

People who have started, but not completed, a full series of a vaccine that is approved by the WHO, but not by the FDA, should receive a complete vaccine series with a U.S. FDA-authorized vaccine.

Employees, interns and volunteers who have been vaccinated outside the U.S. may submit their vaccine record from the place where it was administered.

11. If an employee, intern, or volunteer gets their first dose prior to when they are subject to this requirement will they be required to provide weekly test results?

Employees, interns, and volunteers covered by the DOHMH Commissioner's Orders related to Staff in Public Health Care Settings or Residential and Congregate Settings must have their first dose by the date specified in those orders. An employee, intern or volunteer who has received at least one dose of a vaccine that requires two doses (ex. Moderna and Pfizer) will not need to submit the results of weekly testing as long as proof of their second dose is provided within one month. If the employee, intern or volunteer does not submit proof of having received the second dose by such time, they will be subject to the weekly testing requirement until they do submit that proof.

For all others:

An employee, intern, or volunteer who has received one dose of a single dose COVID-19 vaccine (ex. Johnson and Johnson) by September 13, 2021 or the date they commence employment ("the effective start date"), whichever is later, will not need to submit proof of weekly negative test results.

An employee, intern or volunteer who has received at least one dose of a vaccine that requires two doses (ex. Moderna and Pfizer) by September 13, 2021, or the effective start date, whichever is later, will not need to submit the results of weekly testing as long as proof of their second dose is provided within one month of their effective start date. If the employee, intern or volunteer does not submit proof of having received the second dose by such time, they will be subject to the weekly testing requirement until they do submit that proof.

Employees, interns, and volunteers who wish to remove their face covering must be fully vaccinated (note there is a different policy for staff who are client-facing and in certain settings, see Question 7). An individual is considered fully vaccinated two or more weeks following receipt of the second dose in a 2-dose series of a COVID-19 vaccine, or two or more weeks following receipt of one dose of a single dose COVID-19 vaccine.

12. What counts as proof of vaccination?

Employees, interns, and volunteers may submit, using secure means, proof of vaccination directly to their own agency or contract organization. Employers should maintain a confidential record of the employees who have demonstrated proof of vaccination.

Proof must be:

- An official CDC card or other official immunization card bearing the employee's name and date(s) of vaccine administration. The employer must see this document or a photograph of it;
- An Excelsior Pass issued by the State of New York; or
- The NYC COVID SAFE app that clearly displays an image of the CDC card or other official immunization card with the above noted requirements. The NYC COVID SAFE app can be

Issued 08/11/2021

downloaded for Apple or Android (or by searching “NYC COVID Safe” on Apple app store or Google Play store).

Proof of vaccination for vaccines administered outside the U.S. must be an official immunization record and will include all of the following:

- First name and last name
- Date of birth
- Vaccine product name (ex: Moderna)
- Lot number (note: lot number may not be included on all official cards)
- Date(s) administered
- Site where the vaccine was administered or person who administered the vaccine.

13. How will City agencies use the proof of vaccination?

Agencies will collect vaccination proof from City employees using secure means. This information will be used to compile a list of employees who have not submitted proof of vaccination and must wear a face covering and submit weekly negative test results. HR must ensure that these employees submit negative test results, as a term of their employment. See information below regarding consequences for failure to comply.

This list of employees, volunteers, and interns required to wear a face covering will be securely shared with designated supervisors and other designated agency personnel who will conduct audits of face covering compliance. Agencies should proactively audit for compliance daily. In the compliance support role, designated agency staff must never inquire about an employee’s medical condition; such inquiries may be a violation of federal law. Refer to the guidance issued by the City’s Chief Privacy Officer on 7/30/21 for further information about handling individuals’ confidential vaccination status and related information.

An employee, intern, or volunteer who chooses not to share their vaccination status with their agency’s Human Resource Department (HR) must continue to wear a face covering. An unvaccinated employee, intern, or volunteer, other than those with an approved reasonable accommodation, must continue to wear a face covering as required by DCAS Commissioner's Directive 2020-1.

14. What if an employee, intern, or volunteer is vaccinated, but lost their CDC vaccination card?

Employees, interns, and volunteers who lost their CDC vaccination card should contact the medical provider where they got vaccinated to get an official record of vaccination. If an employee, intern or volunteer was vaccinated in New York City, they can request their immunization record through the DOHMH self-service portal [My Vaccine Record](#).

15. For employees, interns, and volunteers who opt to do weekly testing, which tests qualify?

Only polymerase chain reaction (PCR) tests processed by medical professionals qualify for the City’s COVID-Safe Requirement. These tests usually take one-two days to process at a lab, but some PCR tests are rapid tests. Both rapid and non-rapid PCR tests can be used.

16. Where can people be vaccinated?

Vaccination is free and convenient across the five boroughs and in bordering counties. Over 95% of all NYC residents live within half a mile of a public vaccination site. Convenient vaccination

Issued 08/11/2021

sites can be found via <https://www.nyc.gov/vaccinefinder> or by calling 877-VAX-4-NYC. For anyone who lives within the five boroughs (including City employees and contractors' employees), the City is also making at-home vaccination free and available; call 877-VAX-4-NYC or visit <https://www.nyc.gov/homevaccine> to sign up to have a team member come to your home to vaccinate you and any other household members, with any of the three FDA-authorized vaccines you choose.

17. When must employees submit a weekly test?

For each day that an employee reports to work onsite, they must have had a negative COVID-19 PCR test taken within the preceding seven days. This test result, which must be submitted to HR, must be negative. An employee who has been tested within the preceding seven days, but is still waiting for the result may report to work with a pending test result as long as they meet the criteria of the health screening, and provided that the test result is submitted to HR as soon as it becomes available.

18. Where can people find testing?

The City of New York offers free COVID-19 testing in convenient locations across the five boroughs and will continue to do so, but employees may opt to go to their trusted medical professionals as well. There are hundreds of PCR testing locations in the five boroughs; the list can be found at <http://www.nyc.gov/covidtest>. If employees or contractors would prefer to receive a test specifically at a City-sponsored site, that list can be found here: <https://www.nychealthandhospitals.org/test-and-trace/testing>.

19. Will the City be providing on-site vaccination and testing at City worksites?

Testing and vaccination are both widely available and convenient for all New Yorkers. The City will continue to bring mobile vaccination clinics to select worksites, including certain City worksites. The City will bring mobile testing to City worksites that previously receiving regular testing, specifically for schools, corrections facilities, and some congregate settings.

20. Do rapid tests qualify?

Rapid PCR tests will qualify for this requirement. Antigen tests will not.

21. Do at-home tests qualify?

At-home tests will not be accepted at this time.

22. What happens if an employee, intern, or volunteer tests positive?

An employee, intern or volunteer who tests positive must not report to work until they meet all the criteria of the health screening and all of these conditions are met:

- a. It has been at least 10 days since their symptoms began;
- b. They have not had a fever for at least 24 hours without the use of a fever reducer; and
- c. Other respiratory symptoms (cough, shortness of breath) have improved.

For information on the City's Leave Policy during COVID-19, please see: [Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 \(COVID-19\)](#).

Issued 08/11/2021

23. Will employees, interns, and volunteers be expected to pay out of pocket for vaccine or test?

No. Vaccination is free to all New Yorkers including City and contract organization employees; nearly 60% of all employees have chosen to protect themselves and their community by getting vaccinated. Testing is provided at no cost to the individual and is widely available. The City will continue to provide options for both vaccinations and weekly PCR testing in all five boroughs and near public transportation hubs to make compliance as convenient as possible.

24. Can employees take time from their shift to get vaccinated?

All employees are allowed to take up to four hours to get vaccinated during their workday. Employees who get a vaccine that requires two doses may take up to four hours on both days they receive a dose of that vaccine. Please see [PSB 600-4 Temporary Citywide Policy for Vaccination of City Employees against SARS-CoV-2](#) for more information. In addition, all employees may be entitled to paid excused leave for any side effects experienced due to the vaccination. Please see: [Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 \(COVID-19\)](#) for more information.

It is suggested that City contractors adopt the same or similar policy. The City will reimburse contractors for costs associated with providing time off to employees getting vaccinated.

25. What happens if an employee is supposed to come in, but says their test results are pending? Do we track how many times someone does this?

Employees who have been tested, but whose test results are pending should come to work as long as they meet the criteria of the health screening. They must provide proof of test collection while they await the result.

26. Does the COVID-Safe Requirement apply to pre-K staff in City-contracted sites? Or only DOE staff?

The COVID-Safe Requirement applies to all City employees and contracted staff interacting with the public or City employees. This includes Pre-K staff in City-contracted sites.

27. Is the City offering any exemptions for the vaccination requirement?

Any employee, intern, or volunteer who is unwilling or unable to be vaccinated, including for medical reasons, will be required to show proof of a COVID-19 PCR test with a negative result once every seven days.

28. Can City and contracted employees take time from their shift to get tested?

City employees may use City time to be tested, but some restrictions apply:

- Employees are required to get tested at the beginning or end of their shift.
- If testing is offered at an employee's place of work, they may not use work hours to be tested off-site.
- If testing is not onsite at the workplace, employees should get tested in a place close to their home or work.
- Employees will be required to document time taken to seek testing and will be required to seek the fastest option available.
- Employees should work with their supervisors to schedule a time for testing.
- Testing time should be scheduled so that it does not have any detrimental impact on operations.

Issued 08/11/2021

Like City employees, contracted employees may use shift time to get tested and the same restrictions apply. Contracted employees with testing available on site must use that option if they get tested during their shift. No additional funding will be provided associated with time off for testing.

29. Will tests at City sites be billed to employees' insurance (which the City pays)?

For many of the tests conducted, employee insurance will be billed. At City-run sites, FEMA requires that the City attempt to bill for all tests in order to seek federal reimbursement for any costs not covered by insurance. For this reason, the City will attempt to bill for most tests performed by a City provider regardless of the fact that the City pays for the insurance coverage. The City does provide some testing without billing for it because the testing is funded by sources of federal funds that are not subject to FEMA rules and regulations.

30. Who is responsible for paying for tests at non-City sites (to the extent it isn't covered)?

Tests are widely available at no cost to individuals across dozens of City-sponsored test sites. Private providers may charge for testing or charge a co-pay and all New Yorkers are strongly encouraged to ask about associated costs before being tested. Most providers across the City will attempt to bill insurance for test collection.

31. Will the City reopen its employee testing sites?

Testing is now widely available and convenient for all New Yorkers. The Test & Trace Corps will continue to deploy City resources to ensure all geographies have access and to respond to case rates, outbreaks, and demand.

32. What incentives are available for vaccination?

Please visit <https://www1.nyc.gov/site/coronavirus/vaccines/vaccine-incentives.page> for a full list of incentives offered for vaccination.

Enforcement and Compliance

33. How will City agencies track compliance?

Each agency will track compliance for their employees, interns, and volunteers. Agencies are responsible for verifying individual vaccination status of each employee, intern, and volunteer, and monitoring compliance with weekly testing and face covering requirements for those who have not submitted proof of vaccination.

34. Are there privacy concerns with handling employee vaccination information and documents?

Yes. Employee vaccination information is considered confidential medical information under the federal Americans with Disabilities Act and is also identifying information that is protected under the City's privacy law. This information must be kept private and secure and may only be shared with designated agency staff and City officials. Refer to guidance issued by the City's Chief Privacy Officer on July 30, 2021 for further information on handling this information, or email PrivacyOfficer@cityhall.nyc.gov.

35. What tools can an agency use to collect and store vaccination or testing proof?

Agencies developing or utilizing a survey tool to collect proof of employee vaccination status, because it is confidential medical information, must only use tools that have successfully

Issued 08/11/2021

completed the citywide application security review and have the appropriate controls to support the storage, transmission, and handling of information classified as “Restricted” information under the NYC Cyber Command Policies & Standards. If an agency procures a vendor to develop its survey tool, the contract should include NYC3 security provisions and be reviewed by the Chief Privacy Officer to ensure appropriate privacy protections are included. For further information, contact PrivacyOfficer@cityhall.nyc.gov or legal@cyber.nyc.gov.

36. How will the COVID-Safe Requirement be enforced for contracted organizations?

All City contractors with covered contracts must submit a signed certification that they are complying with the City’s policies regarding testing, vaccine proof, and face coverings by uploading it directly to their PASSPort vendor profile or sending it to their contracting agency if they do not have a PASSPort account. They must also submit related policies. Further guidance on certification of the COVID-Safe Requirement will be issued soon.

If an agency does not manage contracts via PASSPort, it must independently collect contractor certifications and policies and monitor them in an ongoing manner.

Contractors are subject to reviews for compliance. Like all other contract provisions, if providers are non-compliant, contracting agencies will exercise any rights they may have under the contract.

37. What is the penalty for non-compliance? Will non-compliant employees be subject to termination?

City staff who are in violation of either the COVID-Safe Requirement to be vaccinated or complete weekly testing will be placed on Leave Without Pay until they are in compliance. Employees who refuse to comply will be terminated.

It is suggested that contracted organizations adopt a similar policy. If providers are non-compliant, contracting agencies will exercise any rights they may have under their contract.

38. Will employees be required to use the City’s NYC COVID Safe application?

No. The NYC COVID Safe application should be on every phone issued by the City of New York, if an employee wishes to use it. However, employees may choose to provide one-time documentation of vaccination or provide weekly documentation of a test via any proof acceptable to the employer and consistent with guidance provided above.

39. In City agencies, who is responsible for checking if someone has had a test in the last week? Are supervisors supposed to be involved in enforcement or just HR? Will supervisors be told who is and isn’t vaccinated to enforce among their staff? Will they make direct outreach to employees or go through HR?

Employees, volunteers, and interns must submit proof of full vaccination once or proof of a negative COVID-19 PCR test ever seven days to HR. HR will provide designated supervisors and other designated personnel with a list of employees who are required to wear a face covering. HR will enforce compliance with the test requirement and will notify any employee who is out of compliance. HR and HR-designated supervisors/personnel will enforce compliance with the face covering requirement using the list provided by HR.

Issued 08/11/2021

Employees seeking reasonable accommodations should seek them through the agency's EEO office. A supervisor who becomes aware that an employee may need an accommodation should let them know the official way to request an accommodation.

40. In City agencies, if someone suspects that a coworker is in violation of the COVID-Safe Requirement, what is the process for reporting their concern?

An employee may speak to their HR representative if they believe that a coworker is not complying with City policy. The employee should not engage their coworker directly on the issue.

41. In City agencies, do staff have to show proof of vaccination or testing multiple times a day every time someone comes in and out of the workplace, or can they get a "pass" for the day or permanently?

No. Designated supervisors and other designated personnel will be provided with a weekly list of employees for the purpose of monitoring face covering compliance. HR will be responsible for monitoring weekly test compliance for those who choose to remain unvaccinated. Agencies will designate supervisors or other agency personnel who will conduct audits of face covering compliance on a regular basis.

42. Do staff have to tell the City whether or not they are vaccinated?

No. Any employee who prefers to keep their vaccination status private can do so by providing a weekly COVID-19 PCR test and wearing a face covering.

43. Does a test have to be within the previous seven days or in the same calendar week?

The test must be within the previous seven days and does not need to be in the same calendar week.

Where can I find...

- Vaccination sites: www.nyc.gov/vaccinefinder
- Vaccination appointments: www.vax4nyc.nyc.gov and 877-VAX-4-NYC
- How to schedule an at home vaccine appointment: www.nyc.gov/homevaccine and 877-VAX-4-NYC
- A testing site: www.nyc.gov/covidtest
- A City-run testing site: www.nychealthandhospitals.org/test-and-trace/testing/
- A doctor or nurse to talk with about my vaccination concerns: call 311 and ask to talk to a clinician about COVID-19 vaccination
- Assistance for New Yorkers experiencing Long COVID: www.nyc.gov/aftercare
- CPO Privacy Guidance dated 7/30/21 contact PrivacyOfficer@cityhall.nyc.gov

Issued 08/11/2021

Appendix: Phases**On August 2nd: Clinical settings**

- **Health + Hospitals**
 - All employees and contractors
- **DOHMH**
 - All clinic-based employees and contractors

On August 16th: Residential and Congregate Programs, including the following agencies and their contractors.

- ACS
 - Residential juvenile justice programs (Secure and nonsecure detention, close to home)
 - Residential foster care
 - The Children's Center
- DFTA
 - Senior Centers
 - NORCS
 - Social Adult Day Cares
- DHS
 - Shelter (family, adult, safe havens, etc.)
 - Drop in Centers
- DOC
 - Jails
- DOHMH
 - Supportive housing
- DYCD
 - RHY Shelter
 - Drop in center
- HRA
 - DV Shelter
 - HASA shelter/supportive housing
- MOCJ
 - Transitional housing sites

On September 13th: ALL City Workforce and Certain Contracted Employees

- All City employees
- All City interns and volunteers working in person and indoors with service recipients or working in person and indoors with City employees.
- All contracted employees interacting with members of the public or City employees

Exhibit D

Municipal Labor Committee

55 Water Street, 23rd Floor / New York, NY 10041 / (212) 815-1474

CHAIRPERSON

HARRY NESPOLI
Local 831, I.B.T. Uniformed
Sanitationmen's Association, AFL-CIO

CO-CHAIRPERSON

HENRY A. GARRIDO
District Council 37, AFSCME, AFL-CIO

EXECUTIVE VICE-CHAIR

MICHAEL MULGREW
United Federation of Teachers, AFL-CIO

SECRETARY

GREGORY FLOYD
Local 237
City Employees Union, I.B.T., AFL-CIO

TREASURER

MARK CANNIZZARO
Council of School Supervisors &
Administrators

VICE CHAIRPERSONS

ANDREW ANSBRO
Uniformed Firefighters Association

BENNY BOSCIO, JR.
Correction Officers' Benevolent Association

BARBARA BOWEN
Professional Staff Congress
City University of New York

JOSPEH COLANGELO
S.E.I.U. New York City Local 246

ROBERT CROGHAN
Organization of Staff Analysts

JUDITH A. CUTCHIN
New York State Nurses Association

PAUL DIGIACOMO
Detectives' Endowment Association

JAMES LEMONDA
Local 854, Uniformed Fire Officers
Association, AFL-CIO

MARTIN A. LYDON
District Council of Carpenters, AFL-CIO

WILLIAM M. LYNN
International Union of Operating Engineers
Local 30, AFL-CIO

JOSEPH MANNION
Sanitation Officers Association

GLORIA MIDDLETON
Local 1180, NYC Administrative
Employees, CWA, AFL-CIO

FRANK PROSCIA, M.D.
Doctors Council

PETER STEIN
Local 508, NYC Lifeguard Supervisors,
AFSCME, AFL-CIO

LOUIS TURCO
Lieutenants Benevolent Association

MAF MISBAH UDDIN
Local 1407, NYC Accountants, Statisticians
& Actuaries, AFSCME, AFL-CIO

ANTHONY WELLS
Local 371, Social Service Employees,
AFSCME, AFL-CIO

Executive Secretary

ELLEN MEDWID

August 12, 2021

Hon. Dean Fuleihan
First Deputy Mayor
City of New York
City Hall
New York, New York 10007

Hon. Emma Wolfe
Chief of Staff and
Deputy Mayor for Administration
City of New York
City Hall
New York, New York 10007

Hon. Renee Campion
Commissioner
New York City Office of Labor Relations
22 Cortlandt St.
New York, NY 10007

Dear All:

I write to express the severe concern—and great disappointment—of the MLC Union leaders on the lack of progress in arriving at a negotiated program to implement the City's vaccine/testing policy.

Several weeks ago, the City announced, without prior consultation or bargaining with the Unions, a policy that would require public employees either to be vaccinated or be tested weekly to avoid suspension without pay. Despite this unilateral action, with an eye towards the unfortunate advance of the Delta variant, the MLC's officers agreed to meet and discuss the proposed policy with you and numerous other key City officials on July 28th. The tenor of the discussion, we thought, was the City's desire to work collaboratively with the Unions to navigate a path towards achieving the objectives of the policy.

City leadership collectively asked the Union leaders to provide proposals and raise concerns, which we did. Primary among those concerns was the major logistical hurdle of providing timely and accessible testing to the likely 100,000 City workers who, despite the encouragement of many (including Union leaders), would opt out of vaccination for medical, religious and other reasons. This major dilemma, the Unions warned, would exist even if the policy was successful in encouraging a significant portion of the currently unvaccinated employees to vaccinate.

The MLC officers cautioned that logistics take time to work out, would necessarily be agency specific in places and that, without proper planning, the City would be in a position of having to order so many employees home without pay that there would be insufficient staffing to carry out the duties required to appropriately provide services to the residents of the City. We also raised fundamental questions, including, with regard to testing, whether it would be performed at the work site and on work time, and if not, where testing would be available and how workers would be compensated for complying with the mandated policy.

The discussion concluded on a hopeful note with the City agreeing to take back many of the comments, concerns and suggestions for consideration and to continue the discussions with the Unions. *That was two weeks ago.* While there have been sporadic discussions with some, MLC inquiries regarding these essential matters have essentially gone unanswered. This is unacceptable.

The MLC and its leaders have been firm and consistent that while the Unions support encouraging vaccination (and have made considerable efforts on their own to encourage their members to vaccinate), they will not abdicate their legal right and responsibility to protect the rights of workers to opt for either vaccination or testing, to be held harmless for both the time and cost of testing and vaccination, and to have a fair process for any form of discipline. Make no mistake, despite calling this a vaccination policy, the City's proposal creates a new criterion and process for discipline that would allow agencies to suspend workers without pay and without the typical forms of due process provided for under collective bargaining agreements and law.

Accordingly, we seek a prompt meeting to continue this vital discussion. In the meantime, no policy should be implemented before it is negotiated.

Sincerely,

Harry Nespoli

Harry Nespoli
Chair

cc: Henry Garrido
Co-Chair
District Council 37

Michael Mulgrew
Executive Vice Chair
United Federation of Teachers

Gregory Floyd
Secretary
Local 237, City Employees Union

Mark Cannizzaro
Treasurer
Council of School Supervisors & Administrators

Exhibit E

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PAUL DIGIACOMO
Detectives' Endowment Association

JAMES LEMONDA
Local 854, Uniformed Fire Officers
Association, AFL-CIO

MARTIN A. LYDON
District Council of Carpenters, AFL-CIO

WILLIAM M. LYNN
International Union of Operating Engineers
Local 30, AFL-CIO

JOSEPH MANNION
Sanitation Officers Association

GLORIA MIDDLETON
Local 1180, NYC Administrative
Employees, CWA, AFL-CIO

FRANK PROSCIA, M.D.
Doctors Council

PETER STEIN
Local 508, NYC Lifeguard Supervisors,
AFSCME, AFL-CIO

LOUIS TURCO
Lieutenants Benevolent Association

MAF MISBAH UDDIN
Local 1407, NYC Accountants, Statisticians
& Actuaries, AFSCME, AFL-CIO

ANTHONY WELLS
Local 371, Social Service Employees,
AFSCME, AFL-CIO

Executive Secretary

ELLEN MEDWID

August 17, 2021

Hon. Dean Fuleihan
First Deputy Mayor City of New York
City Hall
New York, New York 10007

Hon. Emma Wolfe
Chief of Staff and
Deputy Mayor for Administration
City of New York
City Hall
New York, New York 10007

Hon. Renee Campion
Commissioner
New York City Office of Labor Relations
22 Cortlandt St.
New York, NY 10007

Dear All:

As I have written before, the MLC and its constituent Unions believe strongly that it was inappropriate for the City to have announced the vaccination/testing policy without having met first with the Unions. Nonetheless, we have been working with you on the policy and have sought follow-up meetings, in particular regarding the testing component of the policy.

We are hearing now that the City is considering jettisoning the vaccination/testing program before it has even started in favor of an across the board vaccination mandate. To be clear, any such unilateral action would be improper and a violation of the City's duty to bargain pursuant to the Taylor Law, the New York City Collective Bargaining Law and various collective bargaining agreements.

Should the City move to unilaterally implement a vaccination mandate without the option for regular testing in lieu of vaccination, the MLC and likely various individual Unions would be compelled to take appropriate steps, including legal action, to protect the rights of their members.

Page 2... Vaccination/Testing Program

We look forward to continuing working collaboratively on the vaccination/testing program.

Sincerely,

Harry Nespoli

Harry Nespoli
Chair

cc: Henry Garrido
Co-Chair
District Council 37

Michael Mulgrew
Executive Vice Chair
United Federation of Teachers

Gregory Floyd
Secretary
Local 237, City Employees Union

Mark Cannizzaro
Treasurer
Council of School Supervisors & Administrators

Exhibit F

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, AND OTHERS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the New York City Health Code (“Health Code”), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS New York State has announced that, as of September 27, 2021 all healthcare workers in New York State, including staff at hospitals and long-term care facilities, including nursing homes, adult care, and other congregate care settings, will be required to be vaccinated against COVID-19 by Monday, September 27; and

WHEREAS, section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infection diseases such as COVID-19; and

WHEREAS, in accordance with section 17-109(b) of such Administrative Code, the Department may adopt vaccination measures in order to most effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.07 of the Health Code, no person “shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual” or “fail to do any reasonable act or take any necessary precaution to protect human life and health;” and

WHEREAS, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume] full operations... [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

WHEREAS the New York City Department of Education (“DOE”) serves approximately 1 million students across the City, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in school settings or other DOE buildings will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on July 21, 2021, I issued an order requiring staff in public healthcare and clinical settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing; and

WHEREAS, on August 10, 2021, I issued an order requiring staff providing City operated or contracted services in residential and congregate settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than September 27, 2021 or prior to beginning employment, all DOE staff must provide proof to the DOE that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
2. All City employees who work in-person in a DOE school setting or DOE building must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or


- c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
3. All staff of contractors of DOE and the City who work in-person in a DOE school setting or DOE building, including individuals who provide services to DOE students, must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

Self-employed independent contractors hired for such work must provide such proof to the DOE.

4. All employees of any school serving students up to grade 12 and any UPK-3 or UPK-4 program that is located in a DOE building who work in-person, and all contractors hired by such schools or programs to work in-person in a DOE building, must provide proof to their employer, or if self-employed to the contracting school or program, no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
5. For the purposes of this Order:
 - a. “DOE staff” means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.
 - b. “Fully vaccinated” means at least two weeks have passed after a person received a single dose of a one-dose series, or the second dose of a two-dose series, of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.
 - c. “DOE school setting” includes any indoor location, including but not limited to DOE buildings, where instruction is provided to DOE students in public school kindergarten through grade 12, including residences of pupils receiving home instruction and places where care for children is provided through DOE’s LYFE program.

- d. “Staff of contractors of DOE and the City” means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school setting or other DOE building, and includes individuals working as independent contractors.
- e. “Works in-person” means an individual spends any portion of their work time physically present in a DOE school setting or other DOE building. It does not include individuals who enter a DOE school setting or other DOE location only to deliver or pickup items, unless the individual is otherwise subject to this Order. It also does not include individuals present in DOE school settings or DOE buildings to make repairs at times when students are not present in the building, unless the individual is otherwise subject to this Order.
6. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: August 24th, 2021



Dave A. Chokshi, M.D., MSc
Commissioner