



## **ORDER OF THE PROVINCIAL HEALTH OFFICER**

(Pursuant to Sections 30, 31, 32, 39 (3), 43, 54, 56, 67 (2) and 69 *Public Health Act*, S.B.C. 2008)

### ***FOOD AND LIQUOR SERVING PREMISES - JANUARY 17, 2022***

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl>  
(excerpts enclosed)

- TO: OWNERS AND OPERATORS OF FOOD SERVICE ESTABLISHMENTS WITH TABLE SERVICE, FOOD PRIMARY OR LIQUOR PRIMARY ESTABLISHMENTS, INCLUDING PUBS, BARS, LOUNGES AND NIGHTCLUBS, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS WITH SEATING, PRIVATE CLUBS OR CERTAIN LICENSED COUNTER SERVICE, TAKE-OUT OR QUICK SERVICE FOOD SERVICE ESTABLISHMENTS**
- TO: PATRONS OF FOOD SERVICE ESTABLISHMENTS WITH TABLE SERVICE, FOOD PRIMARY OR LIQUOR PRIMARY ESTABLISHMENTS, INCLUDING PUBS, BARS, LOUNGES AND NIGHTCLUBS, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS WITH SEATING, PRIVATE CLUBS OR CERTAIN LICENSED COUNTER SERVICE, TAKE-OUT OR QUICK SERVICE FOOD SERVICE ESTABLISHMENTS**
- TO: MEDICAL HEALTH OFFICERS**

#### **WHEREAS:**

- A. On March 17, 2020 I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event, as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. Vaccination is safe, highly effective, and the single most important preventive measure a person can

take to protect themselves, their families, and other persons with whom they come into contact from infection, severe illness and possible death from COVID-19. In particular:

- (a) the vaccines available in British Columbia, in company with other protective and preventive measures, are highly effective and provide protection across all eligible age groups against infection and strong protection against severe illness and death;
- (b) most British Columbians have strong and durable protection from SARS-CoV-2 resulting from the extended interval between dose one and dose two of vaccine that is being utilized in British Columbia; in addition, a new vaccine is now being offered which only requires one dose to be effective, and booster doses are being implemented in order to reinforce the protection afforded by vaccination;
- (c) a full course of vaccine provides more effective and durable protection against infection and severe illness than natural immunity from prior COVID-19 infection alone, or natural immunity in combination with a single-dose of vaccine; and
- (d) a full course of vaccine provides highly effective and durable protection from severe illness resulting in hospitalization or death from COVID-19, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people.

- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be readily available in British Columbia and while substantial progress has been made in vaccinating the population of British Columbia 12 years of age and older, and children aged 5 to 11 years of age are now being vaccinated, a portion of the public remains unvaccinated and there are communities where vaccination rates are low;
- E. Communities with low vaccination rates have experienced rapid spread of SARS-CoV-2, causing serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people. By contrast, communities with high vaccination rates have seen corresponding lower transmission and case rates;
- F. Unvaccinated people are at a significantly greater risk than vaccinated people of being infected with SARS-CoV-2, and those who are infected, experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
- G. People who are vaccinated can be infected with SARS-CoV-2, but experience less severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who contract COVID-19 can transmit SARS-CoV-2 but are also generally contagious for shorter periods of time, are less symptomatic, and are less likely to transmit SARS-CoV-2, when compared to unvaccinated infected persons;
- H. This situation has been exacerbated over time, first by the arrival of the highly transmissible Delta variant of SARS-CoV-2, which is now circulating in British Columbia and causing significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people, than earlier variants, and now by the arrival of the even more transmissible Omicron variant, which is responsible for a surge in infections in the province, and which I expect will very shortly overtake the Delta variant as the dominant strain of SARS-CoV-2 circulating in the province.

- I. Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but the transmissibility of the Delta and now the Omicron variant means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions;
- J. The Omicron variant has introduced significant uncertainty into the course of the pandemic, and the rapidly rising infection rates in British Columbia and experience in other places have led me to conclude that unless measures are put in place immediately to check the spread of Omicron there will be sufficient serious illness among the public to overwhelm the Province's public health and health care systems, which is already operating beyond capacity.
- K. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spill-over effects on health care delivery across the Province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population, primarily among unvaccinated people;
- L. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to the transmission of SARS-CoV2, and to provide care for those who become ill with COVID-19, primarily unvaccinated people who comprise the majority of hospitalizations and ICU admissions;
- M. While people who have contracted SARS-CoV-2 may develop some natural immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors, including severity of infection. The risk of reinfection and hospitalization is significantly higher in people who remained unvaccinated after contracting SARS-CoV-2 than in those who were vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection. It does so by providing a stronger immune response that is known to be effective for a longer period of time and against a wider variety of strains of SARS-CoV-2 that are currently circulation in British Columbia, including the Delta variant;
- N. Vaccination is the single most important preventive measure a member of a community can take to protect themselves and other members of the community, from infection, severe illness and possible death from COVID-19;
- O. People over 70 years of age, and people with chronic health conditions or compromised immune systems, are particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated;
- P. Included among the members of the community who are more likely to be infected are children aged 5 to 11 years. This is because children in this age group have only recently become eligible for vaccination and it will take some time before the members of this group can be fully vaccinated. Children under the age of 5 will remain unprotected from infection until a vaccine is available for them;
- Q. Adults and children who are either particularly vulnerable to infection with SARS-CoV-2 or too young to be immunized depend upon the people with whom they come into contact to protect them

from the risk of infection;

- R. Unvaccinated people in close contact with other people can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19 and become seriously ill; in particular, social mingling, particularly when coupled with the consumption of alcohol which increases risky behavior, is associated with increases in the transmission of SARS-CoV-2;
- S. Programs that require that proof of vaccination be provided have been shown to increase vaccination uptake in populations, thereby reducing the public health risk of COVID-19;
- T. There are difficulties and risks in accommodating persons who are unvaccinated, since no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death;
- U. I have considered and continue to consider, based on the currently available generally accepted scientific evidence whether other measures, such as natural immunity, PCR testing or rapid antigen testing, are as effective as vaccination in reducing the risk of transmission of SARS-Co-2 or the severity of illness if infected;
- V. Routine COVID-19 testing of asymptomatic people is not recommended in British Columbia and polymerase chain reaction (PCR) testing capacity is reserved for people who may be ill with COVID-19 to promote public health case identification, follow up and control measures. Asymptomatic testing increases the likelihood of generating false positive tests, which can unnecessarily consume public health resources in following up false positive tests. Similarly, rapid testing, which is followed up with confirmatory PCR testing for positive tests, is reserved for specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes of COVID-19, such as in long-term care and assisted living facilities, or in remote communities where obtaining results of PCR testing may be delayed;
- W. There are clear, objective criteria for determining whether a person has a medical deferral to a COVID-19 vaccination, and very few people fall into this category;
- X. Various options for establishing vaccine status, including in paper and online format, are readily available to members of the public;
- Y. I recognize the societal effects, including the hardships, which the measures which I have and continue to put in place to protect the health of the population have on many aspects of life, and, with this in mind, continually engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the public, including constitutionally protected interests, in gatherings and events, against the risk of harm to public health created by gatherings and events and unvaccinated persons;
- Z. I further recognize that constitutionally protected interests include the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, including specifically freedom of religion and conscience, freedom of thought, belief, opinion and expression, and the right not to be deprived of life, liberty or security of the person, other than in accordance with the principles of

fundamental justice. I understand that making decisions about whether to get vaccinated may engage these rights and freedoms. However, these rights and freedoms are not absolute and are subject to such reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society, which include proportionate, precautionary and evidence-based measures, including vaccination, to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the *Charter* rights and freedoms of British Columbians less intrusively, and balance these rights and interests in a way that is consistent with the protection of public health. I have concluded that the measures which I am putting in place in this Order are proportionate, rational and tailored to address the risk, and are neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect public health at this time. In my view, any limits on constitutionally protected rights and freedoms arising from this Order, are proportionate and reasonable in the interests of protecting public health and there are no other reasonable alternatives that would provide the same level of protection for the population.

- AA. In addition, I recognize privacy interests and the interests protected by the *Human Rights Code*, and have taken these into consideration when exercising my powers to protect the health interests of members of the public from the risk created by being in contact with unvaccinated persons in food or liquor serving premises, particularly with the arrival of the Omicron variant in the province;
- BB. For certainty, this Order is not directed at food or liquor serving premises which are located in airports or at BC Ferries terminals or on BC ferries; designated onsite liquor retail and dedicated sampling room areas without seating attached to a liquor manufacturing facility; a person providing or collecting take-out food or liquor; a person who delivers food or liquor to, or who receives food or liquor in a place other than a food service establishment or liquor serving premises; unlicensed counter service, take-out or quick service food service establishments without table service; licensed counter service take-out or quick service food service establishments without table service which do not sell liquor for consumption on the premises; unlicensed self-serve food areas; food courts and food trucks; drive-through food service establishments; cafeterias in grocery stores; hospitals; licensed care facilities; assisted living residences; independent living facilities; correctional facilities; industrial camps; public or independent schools; post-secondary institutions; workplace cafeterias; cafeterias for resident students attending educational institutions; or other places in which food or liquor is served to residents, rather than to the general public.
- CC. I have reason to believe and do believe that
- (a) the continued presence of unvaccinated people in the population, more so in some age groups and some communities where vaccination rates continue to be low, coupled with the emergence of the highly transmissible Omicron variant, poses a risk to the health of the population, threatens the capacity of the public health and health care systems to address the health care needs of the population, and constitutes a health hazard;
  - (b) in order to protect the health of the public health and the health care system it is necessary for me to put in place preventive measures to reduce the risk of the transmission of SARS-CoV-2 in food and liquor serving premises, which if left unchecked could lead to widespread infection and serious illness and overwhelm the health care system;
  - (c) it is in the public interest for me to proceed on a precautionary basis to exercise the powers in sections 30, 31, 32, 39, 54, 56, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

## **THIS ORDER**

- A. REPEALS AND REPLACES MY ORDER MADE ON DECEMBER 22, 2021, WITH RESPECT TO FOOD AND LIQUOR SERVING PREMISES,**
- B. CONFIRMS MY VARIANCE OF NOVEMBER 12, 2021,**
- C. APPLIES THAT VARIANCE TO THIS ORDER**

### **Definitions in this Order:**

**“food service establishment”** has the same meaning as in the Food Premises Regulation;

**“full meal service”** includes food provided by a caterer to the premises or available from a food truck located beside or on the premises, but does not include snacks, appetizers or tapas on their own;

**“life cycle event”** means a significant event in a person’s life, including a birth, a birthday, a coming of age, an engagement, an upcoming marriage, a promotion, the receipt of an award, a retirement or a celebration of life;

**“nightclub”** means a liquor primary establishment at which the main activities are selling liquor and providing music to which patrons can dance;

**“operator”** means a person who operates a premises;

**“party”** means another person or other persons who accompany a person to a food or liquor serving premises;

**“patron”** means a person who is present as a customer on premises, but does not include an owner, operator or member of staff;

**“premises”** includes both the inside and outside area of a place being operated as a

- (a) a food service establishment with table service, including a buffet with table service, or a cafe,
- (b) a food primary or liquor primary establishment, including a pub, bar, lounge, nightclub, liquor manufacturing facility that has a tasting room with seating, or a private club; or
- (c) a licensed counter, take-out or quick service food service establishment without table service which sells liquor for consumption on the premises;

**“physical barrier”** means a barrier which is designed, installed and maintained in accordance with WorkSafeBC guidance at <https://www.worksafebc.com/en/resources/health-safety/information-sheets/covid-19-health-safety-designing-effective-barriers?lang=en>;

**“table service”** includes providing any of the following services:

- (a) taking a reservation from a patron;

- (b) greeting a patron at the entrance, seating a patron, or providing any other hosting services;
- (c) providing a place setting at a table, in a booth or at a counter for a patron;
- (d) providing a menu to a seated patron;
- (e) providing water to a seated patron;
- (f) taking a food or drink order from a seated patron;
- (g) serving food or drink, or providing condiments to a seated patron;
- (h) re-filling a drink for a seated patron;
- (i) clearing dishes, glasses, cups or cutlery after use by a patron while a patron is still at the table;
- (j) taking payment from a patron after a meal;
- (k) taking payment from a patron at their seat;
- (l) providing service to a patron other than from behind a counter;
- (m) providing any other service to a patron at their seat;

“**variance**” means the *Variance of Gatherings and Events & Food and Liquor Serving Premises Orders to Suspend Reconsideration re Proof of Vaccination – November 12, 2021*.

**A. LICENSED PREMISES WITHOUT FULL MEAL SERVICE**

1. Premises which are licensed to serve liquor, and which do not have full meal service, must be closed.
2. An owner or operator must not operate a licensed premises which does not have full meal service.
3. No person may be present as a staff member or a patron in a licensed premises which does not have full meal service.

**B. FOOD SERVICE ESTABLISHMENTS WITH TABLE SERVICE, FOOD PRIMARY OR LIQUOR PRIMARY ESTABLISHMENTS INCLUDING PUBS, LIQUOR MANUFACTURING FACILITIES THAT HAVE TASTING ROOMS WITH SEATING OR PRIVATE CLUBS**

1. For certainty, this Part does not apply to a counter, take-out or quick service food service establishment without table service.
2. An operator must not operate a food service establishment with table service, or a food primary or liquor primary establishment, including a pub, liquor manufacturing facility that has a tasting room with seating, or a private club, except in compliance with the provisions of this Part and Part C.
3. The operator must take steps to prevent the congregation of patrons outside the premises, such as by taking reservations and requesting patrons to remain in their cars or elsewhere until notified by telephone or an App that there is seating available for them on the premises.
4. The operator must assess the premises for places where patrons may congregate and put in place measures to avoid congregation.
5. There must be sufficient seating for patrons on the premises, whether at a table, in a booth or at a counter.

6. In licensed premises, other than private clubs or tasting rooms with a liquor manufacturer licence, patrons must be assigned to a table, booth or counter and shown to their seats.
7. Patrons must stay in the seat to which they are assigned, or at which they seat themselves, and must not move from table to table or mingle with patrons from other parties when not seated.
8. No more than 6 patrons may be seated at a table, unless the party consists of one set of parents and their minor children.
9. Liquor may only be served to a patron who is seated, other than in private clubs or tasting rooms with a liquor manufacturer licence.
10. Patrons must remain seated, other than in private clubs or tasting rooms with a liquor manufacturer's licence, except
  - (a) to use a self-serve food or drink station,
  - (b) use a self-serve lottery ticket dispenser,
  - (c) pay at a pay station,
  - (d) use washroom facilities,
  - (e) to provide assistance to another person who requires care or first aid,
  - (f) when leaving the premises, or
  - (g) for the purpose of doing any of the following with a maximum of five other persons who are in the same party as the patron and who are seated with the patron:
    - (i) play pool, billiards, snooker, or darts; or
    - (ii) bowl, if there is a bowling alley on the premises.
11. There must be a distance of two metres between the backs of the seats of patrons seated at adjacent tables or booths, even if members of the same party are seated at adjacent tables or booths, unless the adjacent tables or booths are separated by physical barriers.
12. There must be two metres between patrons seated at a counter, unless the patrons are in the same party or they are separated by physical barriers.
13. If there is a self-serve food or drink station on the premises,
  - (a) hand washing facilities or alcohol-based sanitizers must be within easy reach of the station;
  - (b) signs reminding patrons to wash or sanitize their hands before touching self-serve food, drink or other items must be posted at the self-serve station; and

- (c) high touch surfaces at the station, and utensils that are used for self-serve, must be frequently cleaned and sanitized.
14. If there are physical barriers between tables or booths or seats at a counter, the tops and bottoms of the physical barriers must be positioned so that the physical barriers block the transmission of droplets produced by breathing, talking, coughing or sneezing between patrons who are seated at adjacent tables, booths or seats at a counter.
  15. Dance floors must be closed with physical barriers or occupied with tables.
  16. Patrons must not dance on the premises.
  17. There must be a sufficient number of staff at premises, other than at private clubs or tasting rooms with a liquor manufacturer's licence, to ensure that
    - (a) patrons remain seated,
    - (b) no more than 6 patrons are seated at a table, unless the party consists of one set of parents and their minor children, and
    - (c) patrons comply with the *Face Coverings (COVID -19) Order*.
  18. An operator must ensure that there is compliance with this Part.
  19. Despite the *Gatherings and Events Order*, a person may celebrate a life cycle event in a food or liquor serving premises to which this Part applies, as long as the requirements of this Part and Part C are complied with.

### **C. PROOF OF VACCINATION**

1. This Part does not apply to a patron under 12 years of age.
2. This Part applies to
  - (a) a premises to which Part B applies, and
  - (b) a licensed counter service, take-out or quick service food service establishment without table service which sells liquor for consumption on the premises
3. In this Part

**“exemption”** means a variance of this Order issued to a person under the *Public Health Act* on the basis of a medical deferral to a vaccination;

**“photo identification”** means one of the following:

- (a) a photo BC Services Card within the meaning of the Identification Card regulation;
- (b) a temporary or permanent driver's licence, issued by a government of a province of Canada;

- (c) a certificate of Indian Status;
- (d) a Métis Nation British Columbia citizenship and identification card;
- (e) a passport attesting to citizenship or other national status, issued by a government of any jurisdiction and including a photograph of the holder;
- (f) another form of identification, issued by a government of any jurisdiction, including a photograph of the holder;
- (g) a military identification card that is issued by a government of any jurisdiction, which includes a photograph of the holder;

**“proof of exemption” means**

- (a) in the case of a person who is more than 18 years of age, photo identification and an exemption certificate;
- (b) in the case of a person who is 18 years of age or younger, an exemption certificate.

**“proof of vaccination” means**

- (a) in the case of a person who is more than 18 years of age, photo identification and a vaccine card;
- (b) in the case of a person who is 18 years of age or younger, a vaccine card;

**“vaccinated”** means to have received all doses of a vaccine or a combination of vaccines, but not including a booster dose, as recommended by

- (a) the provincial health officer, with respect to vaccines approved for use in Canada by the department of the federal government responsible for regulating drugs, or
- (b) the World Health Organization, with respect to vaccines approved by the World Health Organization but not approved for use in Canada;

**“vaccine”** means a vaccine intended for use in humans against SARS-CoV-2;

**“vaccine card”** means proof in one of the following forms that the holder is vaccinated:

- (a) electronic proof or a printed copy of an electronic proof,
  - (i) issued by the government in the form of a QR code, accessible through the Health Gateway online platform, and
  - (ii) showing the name of the holder;
- (b) proof in writing, issued by the government for the purpose of showing proof of vaccination in accordance with orders of the provincial health officer made under the *Public Health Act*;
- (c) proof, whether electronic or in writing, issued
  - (i) by the government of Canada or of a province of Canada, and
  - (ii) for the purpose of showing proof of vaccination in accordance with an order made in the exercise of a statutory power with respect to the protection of public health or the facilitation of international travel;
- (d) in the case of an international visitor,
  - (i) proof, whether electronic or in writing, relied upon to enter Canada, and
  - (ii) the person’s passport or photo identification;

4. Subject to a direction by me, on the recommendation of a medical health officer, that this Part of the Order does not apply to a premises in the geographic area of the Province for which the medical health officer is designated, the following requirements apply:

- (a) An operator must only serve patrons who are vaccinated or have an exemption and who have provided proof of vaccination or proof of exemption.
  - (b) A patron must be vaccinated or have an exemption and must provide an operator with proof of vaccination or proof of exemption in order to be served in a premises.
  - (c) An operator must not permit a patron who is not vaccinated or does not have an exemption and who has not provided the operator with proof of vaccination or proof of exemption, to remain on the premises.
  - (d) A patron who is not vaccinated or who does not have an exemption and who has not provided an operator with proof of vaccination or proof of exemption must not be on or remain on the premises.
5. Commencing at 12:01 AM on December 31, 2021, an operator must scan the QR code on a vaccine card in order to determine whether a participant is vaccinated.
  6. An operator must not scan the QR code with a tool other than a BC Vaccine Card Verifier App.
  7. Subject to section 8, an operator must not retain proof of vaccination or proof of exemption, or use it for any purpose other than to confirm that a patron has been vaccinated or has an exemption as required by this Order.
  8. Despite section 7, with the written consent of a patron, an operator may keep a record of the fact that the patron has provided proof of vaccination or proof of exemption in compliance with this Part until this Order expires or is repealed, and the operator may rely upon this record to satisfy the requirements in this Part with respect to the service or presence of the patron at the premises.

**D. PATRONS OF PREMISES TO WHICH PARTS B OR C APPLY**

1. A patron must not enter premises, or must leave premises, if so directed by the operator or a member of staff.
2. A patron must comply with the requirements or prohibitions in Parts B or C which apply to a premises, and with measures, guidance or direction from an owner, operator, or member of staff, intended to avoid the congregation of patrons, to implement the provisions of this Order and to ensure compliance with the *Face Coverings (COVID-19) Order*.

**E. DELEGATION OF AUTHORITY TO THE MEDICAL HEALTH OFFICER**

Under the authority vested in me by section 69 of the *Public Health Act*, I delegate my authority under section 43 of the *Public Health Act* to the medical health officer for the geographic region of the Province in which a person resides to receive, consider, and make a decision with respect to a request for reconsideration made by the person on the basis of a medical deferral to a vaccination, and to add conditions to or change conditions on an exemption, or to suspend or cancel an exemption.

## F. RELATED MEDICAL HEALTH OFFICERS ORDERS

Recognizing that the risk differs in different regions of the province, and that medical health officers are in the best position to assess local circumstances and to determine whether additional or more restrictive steps need to be taken to reduce the risk of the transmission of COVID-19, **I FURTHER ORDER:**

1. A medical health officer may issue an order further to this Order, for the purpose of having the provisions of the order incorporated into this Order. An order may add further prohibitions, or impose more restrictive limitations or conditions, in the whole or part of the geographic area of the Province for which the medical health officer is designated and, subject to section 2, the provisions of the order are incorporated into this Order when posted on my website. For certainty, a contravention of an order of a medical health officer issued further to this Order, and posted on my website, is a contravention of this Order.
2. While it is in force, a provision in an order made by a medical health officer further to this Order and posted on my website, which adds further prohibitions or imposes more restrictive limitations or requirements than this Order, applies in the whole or part of the geographic area of the Province for which the medical health officer is designated, despite the provisions of this Order.

This Order does not have an expiration date.

After weighing the interests of patrons and staff in food and liquor serving premises, against the interests of persons who are not vaccinated for reasons other than a medical deferral to vaccination, and taking into account the importance of protecting the health of participants and staff, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated, and for the reasons set out in my Variance of November 12, 2021, posted on my website, I have decided, pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the *Act*, to confirm the application of the Variance to this Order, and, in accordance with the Variance, will not be accepting requests for a reconsideration of this Order, except from an individual on the basis of a medical deferral to a vaccination.

A request for an exemption from providing proof of vaccination must be made on the basis that the health of the person would be seriously jeopardized if the person were to be vaccinated, and must follow the guidelines posted on the Provincial Health Officer's website (<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>).

A request under section 43 may be submitted to the Provincial Health Officer at [PHOExemptions@gov.bc.ca](mailto:PHOExemptions@gov.bc.ca) with the subject line "Request for Reconsideration about Proof of Vaccination".

Pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the Act, I will not be accepting requests for a review of this Order.

You are required under section 42 of the *Public Health Act* to comply with this Order.

Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer  
4<sup>th</sup> Floor, 1515 Blanshard Street  
P O Box 9648 STN PROV GOVT, Victoria BC V8W 9P4  
Fax: (250) 952-1570  
Email: [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca)

DATED THIS: 17<sup>th</sup> day of January 2022.

SIGNED:   
Bonnie Henry  
MD, MPH, FRCPC  
Provincial Health Officer

Delivery By: Posting on the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of the *Public Health Act*.

**ENCLOSURE****Excerpts of the *Public Health Act* [SBC 2008] c. 28*****Definitions***

**1** In this Act:

**"health hazard"** means

- (a) a condition, a thing or an activity that
  - (i) endangers, or is likely to endanger, public health, or
  - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
  - (i) is associated with injury or illness, or
  - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

**When orders respecting health hazards and contraventions may be made**

**30** (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

**General powers respecting health hazards and contraventions**

**31** (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;

(b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;

(c) to bring the person into compliance with the Act or a regulation made under it;

(d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.

(2) A health officer may issue an order under subsection (1) to any of the following persons:

(a) a person whose action or omission

(i) is causing or has caused a health hazard, or

(ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;

(b) a person who has custody or control of a thing, or control of a condition, that

(i) is a health hazard or is causing or has caused a health hazard, or

(ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;

(c) the owner or occupier of a place where

(i) a health hazard is located, or

(ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

### **Specific powers respecting health hazards and contraventions**

**32** (1) An order may be made under this section only

(a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and

(b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].

(2) Without limiting section 31, a health officer may order a person to do one or more of the following:

(a) have a thing examined, disinfected, decontaminated, altered or destroyed, including

- (i) by a specified person, or under the supervision or instructions of a specified person,
  - (ii) moving the thing to a specified place, and
  - (iii) taking samples of the thing, or permitting samples of the thing to be taken;
- (b) in respect of a place,
- (i) leave the place,
  - (ii) not enter the place,
  - (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
  - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
  - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;
- (c) stop operating, or not operate, a thing;
- (d) keep a thing in a specified place or in accordance with a specified procedure;
- (e) prevent persons from accessing a thing;
- (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
- (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
- (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
- (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
- (j) provide evidence of complying with the order, including

(i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and

(ii) providing to a health officer any relevant record;

(k) take a prescribed action.

(3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless

(a) the person consents in writing to the destruction of the thing, or

(b) Part 5 [*Emergency Powers*] applies.

### **Contents of orders**

**39** (3) An order may be made in respect of a class of persons.

### **Duty to comply with orders**

**42** (1) A person named or described in an order made under this Part must comply with the order.

(2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

### **Reconsideration of orders**

**43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

(a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,

(b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would

(i) meet the objective of the order, and

(ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or

(c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request

(i) is not relevant, or

(ii) was reasonably available at the time the order was issued;

- (b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;
  - (c) confirm, rescind or vary the order.
- (4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).
- (5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.
- (6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.
- (7) For the purposes of this section,
- (a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and
  - (b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.
- (8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

### **General emergency powers**

**54** (1) A health officer may, in an emergency, do one or more of the following:

- (h) not reconsider an order under section 43 [*reconsideration of orders*], not review an order under section 44 [*review of orders*] or not reassess an order under section 45 [*mandatory reassessment of orders*];

### **Emergency preventive measures**

**56** (1) The provincial health officer or a medical health officer may, in an emergency, order a person to take preventive measures within the meaning of section 16 [*preventive measures*], including ordering a person to take preventive measures that the person could otherwise avoid by making an objection under that section.

- (2) If the provincial health officer or a medical health officer makes an order under this section, a person to whom the order applies must comply with the order unless the person delivers to a person specified by the provincial health officer or medical health officer, in person or by registered mail,
- (a) a written notice from a medical practitioner stating that the health of the person who must comply would be seriously jeopardized if the person did comply, and
  - (b) a copy of each portion of that person's health record relevant to the statement in paragraph (a), signed and dated by the medical practitioner.

(3) If a person delivers a notice under subsection (2), the person must comply with an instruction of the provincial health officer or a medical health officer, or a person designated by either of them, for the purposes of preventing infection with, or transmission of, an infectious agent or a hazardous agent.

### **Offences**

**99** (1) A person who contravenes any of the following provisions commits an offence:

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];