



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

(Pursuant to Sections 30, 31, 32, 39 (3), 53, 54 (1) (k), 57 (1), 67 (2) and 69 of the  
*Public Health Act*, S.B.C. 2008)

### ***POST-SECONDARY INSTITUTION HOUSING COVID-19 PREVENTIVE MEASURES ORDER – SEPTEMBER 9, 2021***

The *Public Health Act* is at:

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

(excerpts enclosed)

**TO: POST-SECONDARY INSTITUTIONS WITH RESIDENTIAL HOUSING**

**TO: RESIDENTS WHO RESIDE IN POST-SECONDARY HOUSING**

#### **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. The presence of virus variants of concern in the Province, in particular the Delta variant, has heightened the risk to the population generally due to the highly transmissible nature of the Delta variant.
- C. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be made available in British Columbia;
- E. While substantial progress has been made in vaccinating the population of British Columbia 12 years of age and older, a significant portion of the public is unvaccinated, which is resulting in increases in cases, hospitalizations, and intensive care admissions, primarily in unvaccinated people. This situation has been exacerbated by the presence of the highly transmissible Delta variant of SARS-CoV-2 in British Columbia.
- F. Unvaccinated persons are at higher risk than vaccinated persons of being infected with SARS-CoV-2 and of transmitting SARS-CoV-2 to other persons.

- G. Most infections occur between unvaccinated people, however, due to the highly transmissible nature of the Delta variant, and in view of the substantial numbers of people in BC who remain unvaccinated, vaccinated people continue to be likely to be exposed to the SARS-CoV-2 virus and to contract COVID-19.
- H. Evidence is emerging that even people who are vaccinated can be infected with SARS-CoV-2 and can transmit SARS-CoV-2, further perpetuating the transmission chain, although this is much less likely than in the case of unvaccinated people.
- I. Unvaccinated people are at a much higher risk of serious complications of COVID-19, which can result in hospitalization, admission to intensive care units and death. In addition to serious impacts on the health of a person who contracts COVID-19, high numbers of seriously ill people can overtax the health care system, to the extent that the health care system can be compromised in its ability to deliver health care to other seriously ill people, further endangering public health.
- J. Congregate living arrangements, including housing for post-secondary residents in which kitchen and bathing facilities are shared, bring people closely together on a regular basis facilitating the transmission of SARS-CoV-2.
- K. With the commencement of the academic year for many post-secondary institutions, many students and other persons are moving into post-secondary housing. The vaccination status of these residents is unknown and the age group to which most residents who live in post-secondary housing belong has the lowest rate of vaccination in British Columbia. The unknown nature of the vaccination coverage rates in the resident housing population, and the potential presence of many of unvaccinated residents living in close quarters, as is characteristic of post-secondary housing, and intermingling and socializing with other unvaccinated and vaccinated residents creates an unknown risk. This risk provides a strong precautionary basis for requiring residents who live in post-secondary housing to report their vaccination status, and for imposing preventive measures in order to protect not only their health, but also the health of other residents, students, staff and faculty at the post-secondary institution.
- L. Medical health officers need to know which residents living in post-secondary housing are unvaccinated in order to most effectively assess the risk of COVID-19 outbreaks in post-secondary housing, and to plan for a response to, and for the management of, an exposure or outbreak of COVID-19 in post-secondary housing;
- M. I recognize the effect which the preventive measures I am putting in place to protect the health of residents, students, staff and faculty at post-secondary institutions may have on residents who are unvaccinated and, with this in mind, have engaged, and will continue to 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, particularly at post-secondary institutions, 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 people affected by the Order, including constitutionally protected interests, against the risk of harm to residents, students, staff and faculty created by the presence of unvaccinated residents in post-secondary housing;
- N. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms, including the right to life, liberty and

security of the person, along with freedom of religion and conscience, freedom of thought, belief, opinion and expression. These rights and freedoms are not, however, absolute and are subject to reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions 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, where doing so is consistent with public health principles;

O. In addition, I recognize the interests protected by the *Human Rights Code*, and have taken these into consideration when exercising my powers to protect the health interests of residents, staff and faculty at post-secondary institutions;

P. I have reason to believe and do believe that

- (i) The risk created by the housing of residents whose vaccination status is unknown in post-secondary housing, where the residents live in close quarters and intermingle and socialize with one another, constitutes a health hazard under the *Public Health Act*;
- (ii) in order to mitigate the risk created by the presence of unvaccinated residents in post-secondary housing, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 57 (1), 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

## **DEFINITIONS:**

### **In this Order**

“**face covering**” means either of the following that covers the nose and mouth of a person:

- (a) a medical or non-medical mask;
- (b) a tightly woven fabric;

but does not include a small or large clear plastic face shield;

“**post-secondary institution**” includes an entity that provides any of the following programs and has post-secondary housing for residents:

- (a) an educational or training program provided under
  - (i) the *College and Institute Act*,
  - (ii) the *Royal Roads University Act*,
  - (iii) the *Thompson Rivers University Act*,
  - (iv) the *University Act*,
  - (v) the *Private Training Act*, or
  - (vi) the *Chartered Professional Accountants Act*;
- (b) a program provided in accordance with a consent given under the *Degree Authorization Act*;
- (c) a theological education or training program provided under an Act;

“**proof of vaccination**” means

- a. in the case of a resident who is resident in a province or territory in Canada, confirmation of vaccination status issued by a government body in either electronic or paper format;

- b. in the case of a resident who is resident in a country other than Canada, the proof of vaccination which was required in order for the resident to enter Canada.

**“post-secondary housing”** means housing provided for students attending a post-secondary institution which is characterized by residents living in a residence with double or single rooms, sharing bathing and toilet facilities and eating in a common cafeteria, or by residents living in a residence and sharing a common bathroom, kitchen and lounge facilities, and includes housing provided directly by a post-secondary institution on by a contractor; it does not include family or apartment housing.

**“resident”** means a person living in post-secondary housing, including students, staff, faculty and other persons;

**“vaccine”** means a World Health Organization approved vaccine against the infectious agent SARS-CoV-2;

**“unvaccinated”** means that a person does not meet the definition of “vaccinated”;

**“vaccinated”** means to have received, at least seven days previously, all recommended doses of a vaccine, or a combination of vaccines, that is approved by the World Health Organization for use against the infectious agent SARS-CoV-2;

#### **A. PREVENTIVE MEASURES APPLICABLE TO RESIDENTS [*LIVING IN POST-SECONDARY HOUSING*]**

1. A resident must be vaccinated to live in post-secondary housing.
2. A post-secondary institution must provide notice to every resident that the resident must provide proof of being vaccinated to the post-secondary institution by September 23, 2021 or by the later date on which the resident is to commence living in post-secondary housing.
3. A resident who receives a notice under section 2 must provide proof of being vaccinated to the post-secondary institution by September 23, 2021, or by the later date on which the resident is to commence living in post-secondary housing.
4. Subject to sections 5 and 6, if a resident does not provide proof of being vaccinated to a post-secondary institution by September 23, 2021, or by the later date on which the resident is to commence living in post-secondary housing, the resident will be considered to be unvaccinated, and must wear a face covering which covers the resident’s nose and mouth when in any area of post-secondary housing, other than the resident’s room.
5. Despite section 4, a resident is not required to wear a face covering over their nose and mouth, if
  - a. the resident is unable to put on or remove a face covering without the assistance of another person;
  - b. the resident is unable to wear a face covering because of
    - i. a psychological, behavioural or health condition, or
    - ii. a physical, cognitive or mental impairment;
  - c. the face covering is removed temporarily for the purpose of identifying the resident wearing it;

- d. the face covering is removed temporarily to communicate with a person with a disability or diverse ability, where visual cues, facial expressions or lip reading or lip movements are important;
  - e. the resident is consuming a food or beverage;
  - f. the resident is carrying out personal hygiene.
6. Despite section 4, a resident who is vaccinated and who provides proof of being vaccinated to a post-secondary institution after September 23, 2021, or after the later date on which the resident commences living in post-secondary housing, is no longer required to comply with section 4.
7. In order to assist the medical health officer in assessing and taking steps to prevent the risk of COVID-19 outbreaks in post-secondary housing, and in planning for a response to, and for the management of, an exposure, case, cluster or outbreak of COVID-19 in post-secondary housing, a post-secondary institution must
- a. make, update and retain a record of
    - i. the name of each resident who has not provided proof of being vaccinated, and
    - ii. the name and address of the post-secondary housing in which the resident resides,
  - b. provide information from this record, or the record itself, to the medical health officer on request,
  - c. provide other information to the medical health officer on request, including
    - i. the number of residents in particular post-secondary housing;
    - ii. the name of and contact information for residents in particular post-secondary housing,
    - iii. the characteristics of particular post-secondary housing, and the facilities which it includes.

**B. DELEGATION OF AUTHORITY TO THE MEDICAL HEALTH OFFICER TO RECEIVE, CONSIDER, AND MAKE A DECISION WITH RESPECT TO, A REQUEST FOR RECONSIDERATION UNDER SECTION 43**

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 receive, consider, and make a decision with respect to a request for reconsideration made by a resident living in post-secondary housing, or by a post-secondary institution with post-secondary housing, to the medical health officer for the geographic area of the Province in which the post-secondary housing is located.

**C. MEDICAL HEALTH OFFICER 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 with respect to the risk of the transmission of communicable diseases in facilities, **I FURTHER ORDER:**

1. A medical health officer may make an order subsequent to this Order for the purpose of imposing more restrictive limitations or conditions with respect to post-secondary housing in the whole or part of the geographic area of the Province for which the medical health officer is designated, or with respect to particular post-secondary housing.

2. While it is in force, a provision in an order made by a medical health officer subsequent to this Order, which imposes more restrictive limitations or requirements than this Order with respect to one or more post-secondary housing residences, or one or more classes of post-secondary housing residences, applies in the whole or part of the geographic area of the Province for which the medical health officer is designated, according to the terms of the order, despite the provisions of this Order.

This Order expires at 12:01 A.M on January 31, 2022.

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*.

Pursuant to section 43 of the *Public Health Act*, you may request the medical health officer to reconsider this Order if you:

- (a) have additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
- (b) have 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) require more time to comply with the order.

A request for reconsideration of a preventive measure on the basis of a medical contraindication made by a person to whom the Order applies must include a signed and dated statement from a medical practitioner, based upon a current assessment, that the health of the person would be seriously jeopardized if the person were to comply with the Order, and a signed and dated copy of each portion of the person's health record relevant to this statement.

A request under section 43 may be submitted to the Provincial Health Officer at [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca) with the subject line "Request for Reconsideration about Preventive Measures in Post-secondary Housing".

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  
4th Floor, 1515 Blanshard Street  
PO 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: 9<sup>th</sup> day of September, 2021

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

DELIVERY BY: Posting to 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.

(6) A health officer who makes an order may vary the order

- (a) at any time on the health officer's own initiative, or
- (b) on the request of a person affected by the order, following a reconsideration under section 43 [*reconsideration of orders*].

### **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.

### **Part applies despite other enactments**

**53** During an emergency, this Part applies despite any provision of this or any other enactment, including

- (a) in respect of the collection, use or disclosure of personal information, the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, and

(b) a provision that would impose a specific duty, limit or procedural requirement in respect of a specific person or thing,

to the extent there is any inconsistency or conflict with the provision or other enactment.

**Delegation by provincial health officer**

**69** The provincial health officer may in writing delegate to a person or class of persons any of the provincial health officer's powers or duties under this Act, except the following:

(a) a power to further delegate the power or duty;

(b) a duty to make a report under this Act.

**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*];