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PERSPECTIVE

What to know about LA's new 'proof of vaccination' ordinance

By Tal Burnovski Yeyni

As COVID-19 becomes part of our current and future reality — and medical data steadily shows that COVID-19 vaccines are safe and effective at preventing hospitalization, death and limiting the spread — various jurisdictions are taking steps to require employees, patrons, and students to show proof of vaccination.

Recently, the city of Los Angeles passed its own vaccination requirements, following a contested public forum and internal disagreements within the City Council. While the ordinance was drafted with an emergency clause, it failed to pass unanimously on the first reading and did not garner the required 12 votes on the second reading, to take immediate effect. Instead, it will take effect on Nov. 6, 31 days after Mayor Eric Garcetti signed it.

The ordinance states that, beginning Thursday, October 21, a covered location must display “prominently on its premises” a notification advising all patrons that, starting Nov. 4, proof of vaccination will be required to enter an indoor portion of the establishment. The city may issue regulations that will clarify any conflict in dates soon.

The ordinance covers establishments where food or beverages are served; gyms and fitness venues; entertainment and recreation venues; and personal care establishments. It specifically excludes any location that does not have an indoor portion (any part with a roof that is enclosed by at least three walls).

To enter, patrons must provide documentation showing they are “fully vaccinated.” An individual is considered fully vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 vaccine, or two weeks after receiving a single dose of the Johnson & Johnson Janssen COVID-19 vaccine. Proof of vaccination may include a paper vaccination card, a photo of the vaccination card, documentation of vaccination from a licensed healthcare provider, or a digital vaccine record.

Covered locations must develop and keep a written record describing how they implement and comply with the ordinance requirements and, for patrons who appear 18 or older, covered locations must also cross reference the vaccination record with the patrons’ photo identification — either their driver’s license, government issued ID, school/work ID, or passport.

While the ordinance does not specifically say that employees are covered, it broadly defines “patron” as anyone who is eligible to receive the vaccine that “enters, patronizes, attends an event, or purchases goods or services” at a covered location or outdoor large event (see below). Arguably, employees may be included as they “enter” a covered location. The city will likely clarify this in the regulations.

Another issue to be sorted out relates to medical or religious exemptions. Patrons who self-attest medical or religious exemptions will be directed to an outside area or may be permitted to enter an indoor portion by providing

proof of a negative PCR (Polymerase Chain Reaction) or antigen COVID-19 test conducted 72 hours prior to entry, with photo identification. Although the ordinance states that patrons must provide self-attestation, it is unclear if the self-attestation would be verbal or if the covered location may require patrons to sign or provide a self-attestation form.

It is also unclear if the photo identification will be required for all exempt individuals or only those who are 18 or older. What is clear is that covered locations probably cannot ask patrons for documentation supporting their request for an exemption.

Unvaccinated patrons that do not qualify for an exemption may only use an outdoor portion of a covered location (i.e., not enclosed by a roof and at least three walls; outdoor seating; structure on the sidewalk that is entirely open on the side facing the sidewalk; or outdoor dining structure, such as a plastic dome that has adequate ventilation).

Indoor entry for unvaccinated individuals may be permitted only with a well-fitted mask and for “brief and limited periods of time” to: use the restroom, order, pick-up or pay for to-go orders.

Another area of ambiguity is what occurs should patrons refuse to get tested. For example, in the case of a gym owner and a patron who have pre-paid for a yearly membership, the ordinance does not provide answers should patrons refuse to get tested. During the first hearing on the ordinance, the Office of the Chief Legislative Analyst indicated each business owner should decide in

accordance with their contractual agreements with patrons.

On the other hand, if a patron chooses to fabricate a vaccine card, according to the CLA, businesses will not be penalized. However, Los Angeles County issued guidance on how to verify vaccination status, including use of a verification app.

The ordinance also covers city facilities. Visitors who do not show proof of vaccination will be provided alternative arrangements, to be determined on a case-by-case basis (i.e., online or remote service, service outdoors, or providing proof of negative COVID-19 test).

Finally, the ordinance requires operators of outdoor large events, including fairs, festivals, parks, etc. with 5,000-9,999 attendees to verify proof of vaccination or negative COVID-19 test for each patron prior to entry. ■

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