ANNA M. ROTH, RN, MS, MPH
HEALTH SERVICES DIRECTOR
CHRIS FARNITANO, MD
HEALTH OFFICER

CONTRA COSTA
HEALTH SERVICES

OFFICE OF
THE DIRECTOR
1220 Morello, Suite 200
Martinez, CA 94553
Ph (925) 957-2679
Fax (925) 957-2651

ORDER OF THE HEALTH OFFICER OF THE COUNTY OF CONTRA COSTA

MANDATING OPERATORS OF SPECIFIED DINING ESTABLISHMENTS, ENTERTAINMENT VENUES AND FITNESS FACILITIES TO RESTRICT ENTRY OR SERVICE BASED ON COVID-19 VACCINATION STATUS OR TESTING

ORDER NO. HO-COVID19-57

DATE OF ORDER: SEPTEMBER 14, 2021

Summary of the Order

This Order of the Health Officer requires operators of dining establishments, entertainment venues where food or beverages are served, and fitness facilities in Contra Costa County to restrict entry or service based on COVID-19 vaccination status or test results.

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040 AND 120175, THE HEALTH OFFICER OF THE COUNTY OF CONTRA COSTA ("HEALTH OFFICER") ORDERS:

1. **Basis for Order.** The emergency of the delta strain of the coronavirus has led to a severe rise of COVID-19 infections, hospitalizations and deaths in Contra Costa County in the past two months. The delta strain became the predominant strain amongst samples sequenced in Contra Costa County and California in early July, 2021, and currently represents over 95% of samples sequenced both at the Contra Costa County Public Health lab and per reports of statewide sequencing. At the time the August 2, 2021 face covering order was issued, the seven-day rolling average of new COVID-19 cases in the County was 289.4 cases per day. There were 117 patients hospitalized with COVID-19 (with 33 in intensive care units). Case rates and daily hospitalization rates peaked in mid to late August, with the seven-day rolling average of new cases at 449.4 on August 14, 2021, and 236 hospitalizations on August 23, 2021, respectively. While by September 1, 2021, the seven-day rolling average of new cases in the County had declined to 299.0 cases per day, and hospitalizations had decreased to 205 (with 59 in intensive care units), the case rate remains well within the Center for Disease Control's high community transmission category.

Deaths due to COVID-19 in Contra Costa County, as reported though death certificate data, have been increasing. There were 15 COVID-19 deaths reported in Contra Costa County in the seven day period ending August 31, 2021, and 20 deaths reported in the seven day period ending September 7, 2021, our highest weekly totals since March, 2021. Deaths are also averaging younger than earlier in the pandemic, and unvaccinated persons who have died from COVID-19 in the past two months are about 15 years younger on average than COVID-19 deaths in fully vaccinated persons. Over half the deaths in the past two months are in persons under age 70. I have determined that more action is needed to reduce the spread of COVID-19 and thus reduce the rate of severe illness, hospitalization, and death from COVID-19.

While most infections, hospitalizations and deaths are amongst unvaccinated individuals, the delta variant has also spread to vaccinated individuals. In Contra Costa County, COVID-19 case rates are approximately five times higher in unvaccinated persons compared to fully vaccinated persons, hospitalization rates are approximately 16 times higher, and death rates are approximately 22 times higher on a population basis. This aligns with national data recently released by the CDC that shows unvaccinated individuals are 4.5 times more likely to get infected, 10 times more likely to get hospitalized, and 11 times more likely to die from COVID-19 than fully vaccinated individuals. Some risk still exists for severe illness and death amongst fully vaccinated persons, especially amongst the elderly and those with compromised immune systems or multiple medical conditions.

Unvaccinated individuals who get infected with the delta variant have higher levels of viral shedding than previous strains of virus, leading to increased infectivity and an ability to more easily spread virus to others. Even with the rise of the delta variant and a possible slight waning of vaccine efficacy over time, vaccinated individuals remain at a much lower risk of catching COVID-19 than those who remain unvaccinated. Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, with the risk of infection reduced by 70% to 95%. Vaccination also appears to reduce the chance of transmission by an infected vaccinated person by 40% to 60%. While studies done when the delta variant was prevalent show that early after the start of infection, virus shedding levels in infected fully vaccinated persons can be similar to that of the unvaccinated, these levels decline much more quickly in someone who is vaccinated, so the overall risk of transmission from a fully vaccinated person during their infectious period is much reduced compared with an infected unvaccinated person. The combination of reduced infection risk plus reduced transmission risk provides a high level of protection within an environment where everyone present is fully vaccinated. This can offset the increased risk associated with people exercising nearby in the same indoor space or people removing their masks to eat or drink indoors. While children less than 12 years old are not eligible to be vaccinated at present, due to physiologic and biologic factors young children are less likely to transmit COVID-19 in public settings than teens and adults.

With increasing recognition that aerosols rather than particulates or direct physical contact are a major, if not the predominant, method COVID-19 is transmitted, vaccination, masking and avoiding crowded, indoor settings are more effective than social distancing and cleaning

of hard surfaces as methods of reducing COVID-19 spread in public places. Small aerosols can travel much farther than 6 feet indoors. A well-reported school outbreak in Marin County this past spring involved an unvaccinated teacher who infected 80% of the students in the first three rows of the classroom with the delta variant strain of COVID-19. Most of these students sat much further than 6 feet away from the teacher, illustrating the risk of aerosol spread from the delta variant. Indoor settings where individuals remove their masks to eat or drink, and indoor settings where people breathe heavily during exercise, are considered high risk settings for COVID-19 virus transmission. Outdoor seating and outdoor exercise offer greater levels of protection due to better air flow outdoors than most indoor settings. Masks reduce transmission from both large particulates as well as small aerosols, although this benefit is reduced when individuals are engaged in heavy breathing during exercise. Many vaccinated individuals are understandably reluctant to enter high-risk indoor settings where masks are removed, or others are engaged in heavy breathing during exercise. In California outbreaks have been documented in bars, gyms, and restaurants since the state began partial reopening in January 2021. Young adults, who currently have lower vaccination rates than older adults in Contra Costa County, may frequent these facilities, acquire COVID-19 and then pass the virus on to vulnerable older adults or children in other settings. As long as case rates are high in young adults, vulnerable older adults and children are at risk, even if they don't set foot in these settings.

The current surge of COVID-19 has placed a severe burden on local hospitals and local health care infrastructure as well as local schools. As of September 10, 2021, there are 31 confirmed or probable COVID-19 outbreaks in congregate living facilities where many vulnerable adults live. COVID-19 hospital admissions remain at a high level. COVID-19 patients have a disparate impact on hospital resources, with a higher percentage (25-30%) of COVID-19 patients winding up in intensive care units and requiring on average a much higher intensity of nursing care and other resources than non-COVID-19 patients. COVID-19 patients also have a higher mortality rate than most hospitalized patients without COVID-19. This has taken an emotional toll not only on the families and the loved ones of those who die of COVID-19, but the medical professionals who have been working tirelessly to try to save these patients. Similar to last winter's surge, local area hospitals have been seeing many days with hospital patient censuses over 120% of the 2019 average hospital census, and individual hospitals have been reporting many days with ICUs having less than 10% of staffed beds available or even completely full ICUs. Even though local hospital cases have declined from their peak on August 23, 2021, hospitals are still stressed, frequently turning down requests for transfers from other counties who are out of available ICU beds due to our local hospitals also having full ICUs. Hospitals are reporting challenges finding nurses from staffing agencies despite offering higher salary bonuses. Staffing has been difficult due to limited availability of registry nurses who are in demand nationwide during this nationwide COVID-19 surge as well as recent staff turnover and retirements of nursing staff, many of whom have felt physically and emotionally exhausted from their work during this pandemic. Hospitals have at times had to resort to lower nursing staffing ratios due to staffing challenges, as well as tents and other non-permanent structures to expand care beyond those facilities that are appropriately licensed and certified to provide such care.

As opposed to the previous school year, most schools have fully opened for in-person education this fall, in recognition of the toll taken on children's intellectual, educational and emotional development after a year or more of distance learning. However, due to the high community prevalence of COVID-19 and the lack of available vaccines for children under age 12, schools are struggling to maintain operations and even stay open amongst a flurry of cases amongst children, most of which were acquired in the community not on the school campus. Each case may lead to dozens of exposures and isolation and quarantine of infected and exposed students, respectively. Schools are struggling to manage all the contact tracing work and properly identify who can safely come to school and who needs to stay home. Since most schools opened in mid-August there have been over 3,900 COVID-19 cases and close contacts identified amongst children attending in person education. Many of these cases and close contacts have had to isolate or quarantine and miss several days of classroom instruction as a result of illness or exposure. A significant risk remains that individual classrooms or entire schools may begin closing due to the sheer volume of students in isolation and quarantine. Although we have not seen a significant increase in pediatric admissions locally, other areas of the United States are seeing increased numbers of children admitted for severe COVID-19. High community transmission rates are closely correlated with communities that are seeing high pediatric admission rates.

Although case rates have declined from their recent peak, they remain in the high community transmission level as defined by the CDC, and we have seen cases go down and then rise again shortly thereafter. The rate of case decline is important as well. The quicker community prevalence rates are reduced, the fewer people get hospitalized and die in the meantime. Contra Costa County remains at high risk of another surge of cases, hospitalizations and deaths in the near future. Last fall cases began rising in early October. Our society is much more open than it was last fall. Schools are open for full in-person education, youth and adult sports have resumed, and most businesses do not have capacity limits or limits on their ability to provide services in indoor settings. Open schools, holiday travel and gatherings will almost certainly lead to another surge later this fall or early this winter. The impact of the recent Labor Day holiday weekend is still to be determined and not yet reflected in current case numbers, due to delay in symptom onset and diagnosis, and the impact of secondary infections that are passed from individuals who became infected over the Labor Day weekend. Vaccines have yet to be granted emergency use authorization for 5-11 year olds and it will likely take a few months after this authorization is granted for a sizeable percentage of that age group to be vaccinated. There is a need to provide additional protections at high-risk settings to reduce the risk of transmission in the settings and reduce the contribution to community transmission rates that visiting or working in these settings provides, by ensuring that all individuals present have been fully vaccinated or have a recent negative test. This order is thus necessary reduce serious illness and death, speed relief to an overburdened health care system and children's educational system in the next few weeks, and interrupt or blunt the next anticipated surge.

1. **Definitions.** For purposes of this Order, the following terms have the meanings given below.

   a. CDC. "CDC" means the U.S. Centers for Disease Control and Prevention.

b. COVID-19 Test. "COVID-19 Test" means a nucleic acid or antigen test to detect infection of a person with SARS-CoV-2, the virus that causes COVID-19.

c. COVID-19 Vaccine. "COVID-19 Vaccine" means a vaccine to prevent COVID-19 that is (1) administered under an emergency use authorization from the FDA; (2) approved by the FDA; or (3) listed for emergency use by the World Health Organization.

d. DHHS. "DHHS" means the U.S. Department of Health and Human Services.

e. Establishment. "Establishment" means any of the following:

(1) A business location where food or beverages are served to Patrons for consumption on the premises. Examples may include but are not necessarily limited to dining establishments, bars, theaters and other entertainment venues.

(2) A fitness facility where Patrons engage in activities that typically involve elevated breathing. Examples may include but are not necessarily limited to gyms, recreation facilities, yoga studios and dance studios.

Notwithstanding the foregoing, Establishments do not include places of worship and other religious institutions, residential facilities, childcare facilities or K-12 schools.

f. FDA. "FDA" means the U.S. Food and Drug Administration.

g. Fully Vaccinated. "Fully Vaccinated" means a person's status two weeks following the person's receipt of a single-dose COVID-19 Vaccine or the second dose of a two-dose COVID-19 Vaccine.

h. Operator. "Operator" means any for-profit, non-profit or higher education entity that owns or operates an Establishment.

i. Patron. "Patron" means an individual who seeks to consume food or beverages or engage in fitness activities at an Establishment.

h. Worker. "Worker" means an individual who is an employee or contractor of an Operator, and whose usual duties include working in indoor areas of Operator's Establishment.

j. WHO. "WHO" means the World Health Organization.

2. Restrictions on Operators.

a. Screening of Workers. Effective as of 8:00 am on November 1, 2021, An Operator shall not permit a Worker to work in indoor areas of an Establishment unless the Worker does at least one of the following:

(1) Receives a COVID-19 Test each week that the Worker is assigned to work at the Establishment, and promptly provide the results of each COVID-19 Test to the Establishment Operator unless test results are sent directly to the Establishment Operator.

(2) Proves that he or she is Fully Vaccinated by presenting to the Establishment Operator one of the following ("Proof of Vaccination"):

(a) The original DHSS CDC vaccination card issued to the individual following administration of the COVID-19 Vaccine ("CDC Card").

(b) The original WHO International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 in a foreign country "WHO Yellow Card");

(c) A paper photograph or photocopy of the CDC Card or WHO Yellow Card;

(d) An electronic image of the CDC Card or WHO Yellow Card;

(e) A digital copy of the individual's COVID-19 Vaccine record, obtained through the following portal: https://myvaccinerecord.cdph.ca.gov/; or

(f) Documentation from a healthcare provider that the individual is Fully Vaccinated.

b. Screening of Patrons.

(1) Effective as of 8:00 am on September 22, 2021, except as set forth in subsection 2.b.(2), an Operator shall not permit a Patron age 12 years old and older to enter indoor areas of the Establishment where other Patrons engage in any of the activities described subsection 1.e. unless the Patron presents to the Operator one of the following:

(a) Proof of Vaccination.

(b) A negative COVID-19 Test report that shows a test date no more than three days prior to the date the Patron seeks to enter the Establishment ("Date of Entry").

(2) Subsection 2.(b)(1) does not apply to masked patrons entering an establishment for a brief period of time solely to pick up or deliver food or goods or to perform other transactions which do not require the patron to remain in the Covered Business for an extended period of time. Subsection 2.(b)(1) does not apply to entertainment venues with concession stands, such as movie theaters, if the Operator does not serve food or

beverages to Patrons who do not provide any of the documentation described in subsection 2.b.(1)(a)-(b).

3. **Effective Date and Time.** This Order takes effect at 8:00 a.m. on September 22, 2021.

4. **Copies; Contact Information.** Copies of this Order shall promptly be: (1) made available at the Office of the Director of Contra Costa Health Services, 1220 Morello Avenue, Suite 200, Martinez, CA 94553; (2) posted on the Contra Costa Health Services website (https://www.cchealth.org); and (3) provided to any member of the public requesting a copy of this Order. Questions or comments regarding this Order may be directed to Contra Costa Health Services at (844) 729-8410.

IT IS SO ORDERED:

Dated: September 14, 2021

Chris Farnitano, M.D.
Health Officer of the County of Contra Costa