



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 239
September 14, 2021

WHEREAS, the COVID-19 pandemic has severely impacted New York City and its economy, and is addressed effectively only by joint action of the City, State, and Federal governments; and

WHEREAS, the state of emergency to address the threat and impacts of COVID-19 in the City of New York first declared in Emergency Executive Order No. 98, and extended most recently by Emergency Executive Order No. 228, remains in effect; and

WHEREAS, additional reasons for requiring the measures continued in this Order are set forth in Emergency Executive Order No. 228;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that section 4 of Emergency Executive Order No. 228, dated August 25, 2021 and last extended by section 1 of Emergency Executive Order No. 237 shall be superseded in its entirety by the provisions of section 2 of this Order.

§ 2. a. The program set forth within this section shall be known as the “Key to NYC” program.

b. I hereby order that, except as provided in subdivision c of this section, a covered entity shall not permit a patron, full- or part-time employee, intern, volunteer, or contractor to enter a covered premises without displaying proof of vaccination and identification bearing the same identifying information as the proof of vaccination.

c. I hereby order that the following individuals are exempted from this section, and therefore may enter a covered premises without displaying proof of vaccination, provided that such individuals wear a face mask at all times when they are unable to maintain six (6) feet of distance from other individuals inside the covered premises:

(1) Individuals entering for a quick and limited purpose (for example, using the restroom, placing or picking up an order or service, changing clothes in a locker room, or performing necessary repairs);

(2) A nonresident performing artist not regularly employed by the covered entity, or a nonresident individual accompanying such a performing artist, while the performing artist or individual is in a covered premises for the purposes of such artist's performance; and

(3) A nonresident professional athlete/sports team that is not based in New York City (i.e., not a New York City "home team"), or a nonresident individual accompanying such professional athlete/sports team, who enters a covered premises as part of their regular employment for purposes of the professional athlete/sports team competition.

(4) An individual 12 years of age or older who enters a covered premises to participate in a school or after-school program offered by any pre-kindergarten through grade twelve public or non-public school, the Department of Youth & Community Development, or another City agency.

d. I hereby direct each covered entity to develop and keep a written record describing the covered entity's protocol for implementing and enforcing the requirements of this section. Such written record shall be available for inspection upon a request of a City official as allowed by law.

e. I hereby direct each covered entity to post a sign in a conspicuous place that is viewable by prospective patrons prior to entering the establishment. The sign must alert patrons to the vaccination requirement in this section and inform them that employees and patrons are required to be vaccinated. The Department for Health and Mental Hygiene ("DOHMH") shall determine the text of such sign and provide a template on its website that a covered entity may use. A covered entity may use the sign available online at nyc.gov/keytoNYC, or use its own sign, provided its sign must be no smaller than 8.5 inches by 11 inches, with text provided by DOHMH in at least 14-point font.

f. For the purposes of this Order:

(1) "Contractor" means the owner or employee of any business that a covered entity has hired to perform work within a covered premise.

(2) "Covered entity" means any entity that operates one or more covered premises, except that it shall not include pre-kindergarten through grade twelve (12) public and non-public schools and programs, houses of worship, child care programs, senior centers, community centers, or as otherwise indicated by this Order.

(3) "Covered premises" means any of the following locations, except as provided in subparagraph (iv) of this paragraph:

(i) **Indoor Entertainment and Recreational Settings**, including indoor portions of the following locations, regardless of the activity at such locations: movie theaters, music or concert venues, adult entertainment, casinos, botanical gardens, commercial event and party venues, museums, aquariums, zoos, professional sports arenas and indoor stadiums, convention centers and exhibition halls, hotel meetings and event spaces, performing arts theaters, bowling alleys, arcades, indoor play areas, pool and billiard halls, and other recreational game centers;

(ii) **Indoor Food Services**, including indoor portions of food service establishments offering food and drink, including all indoor dining areas of food service establishments that receive letter grades as described in section 81.51 of the Health Code; businesses operating indoor seating areas of food courts; catering food service establishments that provide food indoors on its premises; and any indoor portions of an establishment that is regulated by the New York State Department of Agriculture and Markets offering food for on-premises indoor consumption. The requirements of this Order shall not apply to any establishment offering food or drink exclusively for off-premises or outdoor consumption, or to a food service establishment providing only charitable food services, such as soup kitchens;

(iii) **Indoor Gyms and Fitness Settings**, including indoor portions of standalone and hotel gyms and fitness centers, gyms and fitness centers in higher education institutions, yoga/Pilates/barre/dance studios, boxing/kickboxing gyms, fitness boot camps, indoor pools, CrossFit or other plyometric boxes, and other facilities used for conducting group fitness classes.

(iv) “Covered premises” do not include houses of worship or locations in a residential or office building the use of which is limited to residents, owners, or tenants of that building.

(4) “Indoor portion” means any part of a covered premises with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an indoor portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a plastic dome, if it has adequate ventilation to allow for air circulation.

(5) “Nonresident” means any individual who is not a resident of New York City.

(6) “Patron” means any individual 12 years of age or older who patronizes, enters, attends an event, or purchases goods or services within a covered premise.

(7) “Identification” means an official document bearing the name of the individual and a photo or date of birth. Examples of acceptable identification include but are not limited to: driver’s license, non-driver government ID card, IDNYC, passport, and school ID card.

(8) “Proof of vaccination” means proof of receipt of at least one dose of a COVID-19 vaccine authorized for emergency use or licensed for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization. Such proof may be established by:

(i) A CDC COVID-19 Vaccination Record Card or an official immunization record from the jurisdiction, state, or country where the vaccine was administered or a digital or physical photo of such a card or record, reflecting the person’s name, vaccine brand, and date administered; or

(ii) A New York City COVID Safe Pass (available to download on Apple and Android smartphone devices); or

(iii) A New York State Excelsior Pass.

g. I hereby direct that each instance that a covered entity fails to check an individual’s vaccination status shall constitute a separate violation of this section.

h. I hereby direct the City’s Commission on Human Rights to publish guidance to assist covered entities in complying with this section in an equitable manner consistent with applicable provisions of the New York City Human Rights Law.

i. I hereby direct, in accordance with section 25 of the Executive Law, that staff from any agency as may hereafter be designated by the Commissioner of Health and Mental Hygiene shall enforce the directives set forth in this section.

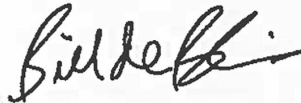
j. (1) I hereby direct that any person or entity who is determined to have violated the requirements of the Key to NYC program shall be subject to a fine, penalty and forfeiture of not less than \$1,000. If the person or entity is determined to have committed a subsequent violation of this section within twelve months of the initial violation for which a penalty was assessed, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$2,000. For every violation thereafter, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$5,000 if the person or entity committed the violation within twelve months of the violation for which the second penalty was assessed. This section may be enforced pursuant to sections 3.05, 3.07, or 3.11 of the Health Code and sections 558 and 562 of the Charter.

(2) I hereby suspend: (i) Appendix 7-A of Chapter 7 of Title 24 of the Rules of the City of New York to the extent it would limit a violation of this section to be punished with a standard penalty of \$1,000 or a default penalty of \$2,000; and (ii) section 7-08 of such Chapter 7 and section 3.11 of the Health Code, to the extent such provisions would limit the default penalty amount that may be imposed for a violation of this section to \$2,000.

k. Covered entities shall comply with further guidelines issued by DOHMH to further the intent of this section and increase the number of vaccinated individuals in the City.

1. Section 20-1271 of the Administrative Code of the City of New York is modified by adding the following provision to the definition of “just cause:” Notwithstanding any provision of this chapter, a fast food employer shall be deemed to have just cause when a fast food employee has failed to provide proof of vaccination required by an emergency executive order issued in response to the COVID-19 pandemic and shall not be required to follow progressive discipline procedures prior to terminating the employee, provided that the employee shall have 30 days from the date when the employer notified the employee of the requirement to submit such proof and the employee shall be placed on leave following such notification until such proof is provided. This provision shall not excuse the employer from the responsibility to provide a reasonable accommodation where required by law.

§ 3. This Emergency Executive Order shall take effect immediately.



Bill de Blasio,
MAYOR