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Section 11

DOCKET NO. _____
DIVISION _____
SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as
Mayor of the City of New Orleans; NEW
ORLEANS HEALTH DEPARTMENT; and
JENNIFER AVEGNO, M.D., in her official
capacity as Director of Health for the New
Orleans Health Department.

STATE OF LOUISIANA

.....

**PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND
PERMANENT INJUNCTION, AND DECLARATORY JUDGMENT**

COME NOW, Plaintiffs, who, in support of their petition for injunctive and declaratory relief, respectfully state as follows:

PARTIES

1.

Plaintiffs are individuals who live and operate in or adjacent to the City of New Orleans, Louisiana, or who are citizens of Louisiana who visit or work in New Orleans and who have endured nearly two years of unprecedented executive control during the COVID-19 pandemic. What started as a temporary means to protect the community from unknown risks has turned into perpetual, unlawful overreach.

Fortunately, the virus has evolved into a milder variant, effective treatments have been developed, and most people now have immunity and have learned to protect themselves. Yet, paradoxically, Mayor Latoya Cantrell and city officials under her direction have *increased* restrictions on individuals and businesses. In response to the original virus, Mayor Cantrell issued orders mandating wearing masks, closing businesses, and limiting gatherings. Now, for Omicron, the mildest variant yet, Mayor Cantrell is lowering the vaccine mandate to *age five* and expanding the mask mandate to *everyone over the age of two*. See www.ready.nola.gov (beginning Tuesday, Feb. 1, the city is expanding the Covid-19 vaccine/testing mandate that went into effect Jan. 3, 2022). **Enough.**

Plaintiffs (Exhibit A) stand on behalf of all persons who demand respect for the rule of law, individual autonomy, parental authority, and those who cherish the City of New Orleans and

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Section 11

are saddened by the social, economic and cultural harm caused by the Defendants' actions under the pretext of an emergency without end.

2.

Made Defendants herein are:

LaTOYA CANTRELL, Mayor of the City of New Orleans, Louisiana, who is being sued in her official capacity.

NEW ORLEANS HEALTH DEPARTMENT, a department of the City of New Orleans organized under the Home Rule Charter of the City of New Orleans.

JENNIFER AVENGNO, M.D., the Director of Health for the New Orleans Health Department, who is being sued in her official capacity.

SUMMARY OF THE ACTION

3.

This is an action for declaratory and injunctive relief challenging Defendants' issuance and enforcement of mandates for vaccination and mask usage in the City of New Orleans in violation of individual constitutional liberties and the separation of powers. First, the vaccinate-or-test mandate violates La. Const. art. I, § 5 by infringing on the fundamental right to privacy with overly broad restricts lacking no accommodation for religious objections, personal or philosophical choice, natural immunity, medical contraindications, or the wide range of factors influencing the severity of the disease process. Second, the vaccinate-or-test mandate denies equal protection under La. Const. art. 1, § 3 by classifying persons based on vaccination status and threatening to punish the exercise of a fundamental right in order to coerce compliance. Third, the mask mandate is unconstitutionally vague and overly broad, and thus fails due process under La. Const. art. 1, § 2. Fourth the third-party enforcement provisions offend due process under La. Const. art. 1, § 2 by unlawfully conscripting private persons into the role of public enforcement officers under the threat of criminal and regulatory sanctions and the denial of municipal services. Finally, the Mayor's emergency orders violate the separation of powers under the State constitution and the City Charter by purporting to enact law without legislative authorization.

FACTS

The COVID-19 Pandemic

4.

On March 11, 2020, the World Health Organization ("WHO") declared a global pandemic in response to the spread of COVID-19, an infectious disease originating in Wuhan, China in 2019 and present in the United States by early 2020.

G

Section 11

5.

A disease is considered pandemic when its spread is vast and unpredictable. It is considered endemic when it becomes “continuously present in a given population at a lower and more stable level, even if cases spike under certain conditions.” James Paton, *Is Covid Becoming Endemic? What Would That Mean?* https://www.washingtonpost.com/business/is-covid-becoming-endemic-what-would-that-mean/2022/01/19/9dd7066a-791c-11ec-9dce-7313579de434_story.html. See also W. Ian Lipkin, *Epidemic, Endemic, Pandemic: What are the Differences?* <https://www.publichealth.columbia.edu/public-health-now/news/epidemic-endemic-pandemic-what-are-differences> (“It has nothing to do with virology, population immunity, or disease severity.”).

6.

By all accounts, COVID-19 is very near endemic.

The COVID-19 Variants

7.

“It is normal for viruses to change and evolve as they spread between people over time. When these changes become significantly different from the original virus, they are known as ‘variants.’ To identify variants, scientists map the genetic material of viruses (known as sequencing) and then look for differences between them to see if they have changed.” World Health Organization (WHO), *Coronavirus disease (COVID-19): Variants of SARS-CoV-2*, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-\(covid-19\)-variants-of-sars-cov-2](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-(covid-19)-variants-of-sars-cov-2).

8.

Variants are labeled “of interest,” “of concern,” and “of high consequence,” as explained by experts at John Hopkins:

A variant of interest is a coronavirus variant that, compared to earlier forms of the virus, has genetic characteristics that predict greater transmissibility, evasion of immunity or diagnostic testing or more severe disease.

A variant of concern has been observed to be more infectious, more likely to cause breakthrough or re-infections in those who are vaccinated or previously infected. These variants are more likely to cause severe disease, evade diagnostic tests, or resist antiviral treatment. Alpha, beta, gamma, and delta variants of the SARS-CoV-2 coronavirus are classified as variants of concern.

A variant of high consequence is a variant for which current vaccines do not offer protection. As of now, there are no SARS-CoV-2 variants of high consequence.

G

Section 11

Robert Bollinger, M.D., M.P.H., and Stuart Ray, M.D., *Covid Variants: What You Should Know*

<https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/a-new-strain-of-coronavirus-what-you-should-know> (January 14, 2022).

9.

The original COVID-19 virus, SARS-CoV-2, has mutated into variants.

10.

There are five COVID-19 variants of concern: Alpha (first detected in the U.S. in December 2020), Beta (first detected in the U.S. in January 2021), Gamma (first detected in the U.S. in January 2021), Delta (first detected in the U.S. in March 2021), and Omicron (first detected in the U.S. in December 2021). See University of Utah Health Communications, *Understanding Omicron and Other Covid-19 Variants*, <https://healthcare.utah.edu/healthfeed/postings/2021/01/covid19-variants.php> (Dec 1, 2021).

11.

Delta and Omicron have been the dominant variants in the United States. Recent statistics show close to 100% of all new cases are caused by Omicron.

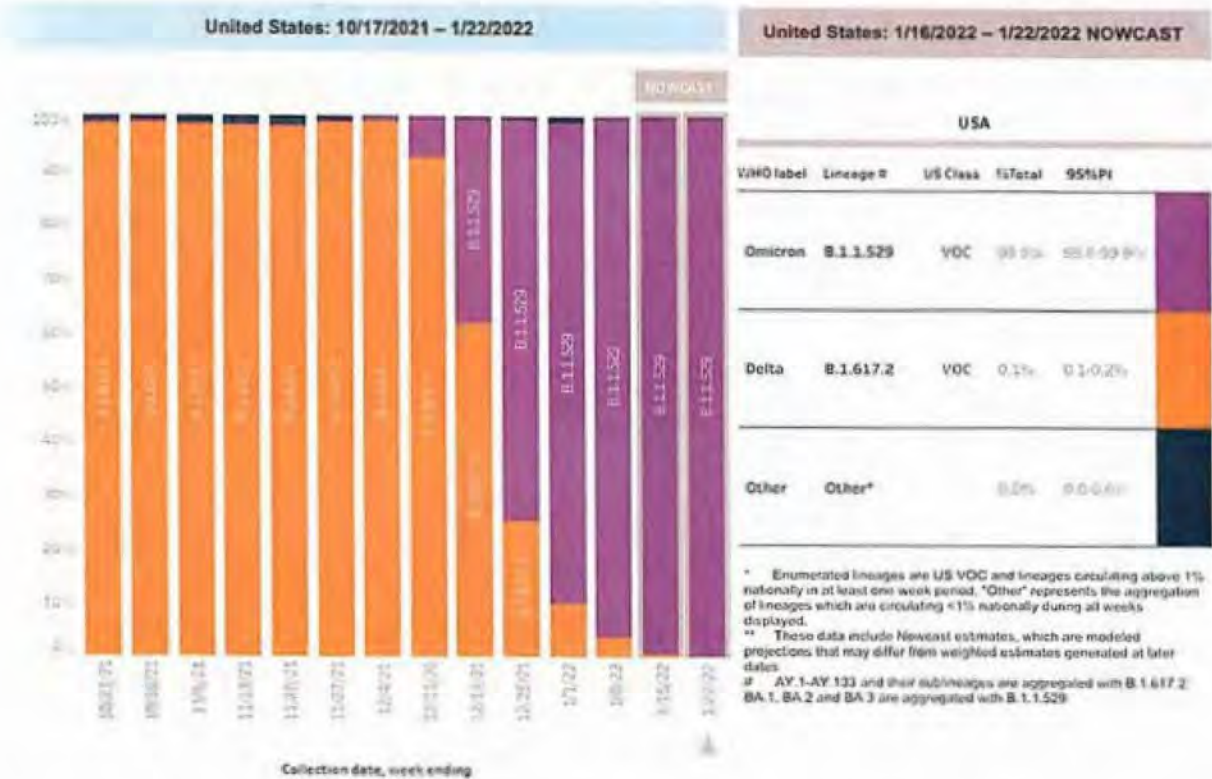
12.

The Delta variant caused the surge of cases in the summer of 2021. Although milder than the original strain of the virus, the Delta variant was highly transmissible. See *Delta Variant: What We Know About the Science*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Sept. 16, 2021). By early November 2021, Delta accounted for 98.7% of all reported cases in the United States. See CDC COVID Data Tracker, Variant Proportions (Updated Jan. 25, 2022), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (for the week ending November 6, 2021.).

13.

According to the CDC, by mid-December the Delta variant was replaced by the Omicron variant as the predominant strain. It now accounts for 99.9% of all cases in the United States:

G
Section 11



CDC COVID Data Tracker, Variant Proportions (Updated Jan. 25, 2022), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

14.

Fortunately, Omicron is much milder than both the original virus and the Delta variant. See CDC, *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous Sars-CoV-2 High Transmission Periods—United States, December 2020-January 2022* (Jan. 25, 2022), <https://www.cdc.gov/mmwr>.

15.

According the most recent CDC study, “[t]he omicron variant of COVID-19 may be more transmissible than previous variants, but it is also associated with less severe disease, accounting for fewer deaths, fewer visits to intensive care units, and shorter hospital stays[.]” Paul Best, Fox News, *Omicron causes less severe infections than delta and other variants, according to CDC study*, <https://www.foxnews.com/us/omicron-causes-less-severe-infections-than-delta-and-other-variants-according-to-cdc-study>, citing *Trends in Disease Severity and Health Care Utilization During the Early Omicron Variant Period Compared with Previous SARS-CoV-2 High Transmission Periods — United States, December 2020–January 2022* https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e4.htm?s_cid=mm7104e4_w (“Despite Omicron seeing the highest reported numbers of COVID-19 cases and hospitalizations during the pandemic, disease severity indicators, including length of stay, ICU admission, and death, were

G

Section 11

lower than during previous pandemic peaks.”). See also Manojna Maddipatla and Joseph P. *COVID is less severe with Omicron than Delta, U.S. study suggests*, <https://www.reuters.com/world/us/covid-is-less-severe-with-omicron-than-delta-us-study-suggests-2022-01-25/> (“The Omicron variant appears to result in less severe COVID-19 than seen during previous periods of high coronavirus transmission including the Delta wave, with shorter hospital stays, less need for intensive care and fewer deaths, according to a new U.S. study.”).

16.

Even the CDC Director has acknowledged that Omicron is dramatically less severe than Delta. See <https://news.yahoo.com/cdc-walensky-cites-study-showing-173151295.html>, *CDC’s Walensky cites study showing Omicron has 91% lower risk of death than Delta* (Jan 12, 2022).

17.

In addition, the majority of people have had COVID-19 and recovered. It is widely recognized that natural immunity provides robust protections against the virus. See <https://www.msn.com/en-us/health/medical/cdc-says-natural-immunity-outperformed-vaccines-against-delta-strain/ar-AASWPCZ?li=BBnb7Kz>.

18.

Simply put, the risk posed by Omicron to most people—especially children—is *de minimis*, far below the risks posed by many other diseases and activities of daily life. For example, the risk to a New Orleans resident or visitor of injury in an automobile¹ or of being the victim of violent crime (1 in 74)² is greater than the risk of severe illness from the Omicron variant.

The COVID-19 “Vaccines”

19.

In 2020, the United States Food and Drug Administration (FDA) granted “Emergency Use Approval” (EUA) for three COVID-19 vaccines currently available in the United States: Pfizer-BioNTech (two-dose vaccine); Moderna (two-dose vaccine); and Janssen (Johnson & Johnson, one-dose vaccine) (collectively, the “COVID Vaccines”).³

¹ See *Complete New Orleans, LA accident reports and new*, <https://accidentdatacenter.com/us/louisiana/new-orleans-la/new-orleans>

² See New Orleans Crime Rates and Statistics, www.neighborhoodscout.com/la/new-orleans/crime.

³ On August 23, 2021, the FDA granted full approval of the Pfizer-Comirnaty vaccine marketed in Europe, and declared it “interchangeable” with the Pfizer-BioNTech marketed in the U.S. Pfizer-BioNTech, itself, has not been fully approved and continues under the EUA designation. It

G

Section 11

20.

Prior to the rise of the Delta Variant, it was wrongly assumed that the COVID Vaccines would protect against both infection and transmission of the disease, like traditional vaccines such as those developed for small pox, measles, mumps, chicken pox, and rubella.

21.

President Biden's assurance in May 2021 that "if you're fully vaccinated you can take your mask off" quickly unraveled after several high-profile outbreaks involving vaccinated persons, leading the CDC to issue "updated guidance" on July 27, 2021 recommending that everyone—vaccinated and unvaccinated—wear a mask in high transmission areas. *See Interim Public Health Recommendations for Fully Vaccinated People*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (last updated Sept. 1, 2021).

22.

Public officials responded to the CDC's call for retreat. On August 2, 2021, Louisiana Governor Jon Bel Edwards re-instituted a mask mandate in Louisiana. At the news conference, the Governor emphasized that the COVID Vaccines do not prevent transmission, stating: "Based on recent CDC data, vaccinated people who do get infected have just as much virus in their systems as unvaccinated people, meaning they can likely spread the virus simply because of the power of the Delta variant." The Governor's top health advisor, Dr. Joseph Kanter, added: "[I]f you are fully vaccinated and do become infected, then you can still relatively transmit the virus" and that "you will have just as much virus in your body as the early days of the pandemic as someone who was unvaccinated."⁴

23.

Like all vaccines, the COVID-19 Vaccines pose certain risks that vary from person to person depending on many factors. Many are non-life threatening and considered mild, but some

is not clear how the Pfizer-Comirnaty "full approval" actually impacts the Pfizer-BioNTech EUA designation. *See* Glenn Kessler, *The False Claim that Fully Approved Pfizer Vaccine Lacks Liability Protection*, THE WASHINGTON POST (Aug. 30, 2021), <https://www.washingtonpost.com/politics/2021/08/30/false-claim-that-fully-approved-pfizer-vaccine-lacks-liability-protection/>.

⁴ *Gov. Edwards Press Conference 08/02/2021*, LOUISIANA PUBLIC BROADCASTING, <https://www.youtube.com/watch?v=UzxWZ8qe0oU> (last visited Sept. 16, 2021).

G
Section 11

are severe. Over time, the data regarding adverse events has evolved in the direction of more risk, not less.

24.

In 1990, Congress created the Vaccine Adverse Events Reporting System (VAERS) to track reports of adverse reactions resulting from vaccination. According to VAERS, the reports of adverse reactions to the COVID Vaccines compared to all other vaccines since 1990 are as follows:

| Event | COVID-19 Vaccines | All other vaccines | TOTAL |
|------------------------|-------------------|--------------------|-----------|
| Total Adverse Events | 731,280 | 755,842 | 1,487,122 |
| Deaths | 10,125 | 5,254 | 15,379 |
| Life Threatening | 11,338 | 9,911 | 21,249 |
| Hospitalizations | 48,970 | 38,828 | 87,798 |
| Permanent Disabilities | 11,825 | 12,830 | 24,655 |
| Office Visits | 143,325 | 47,304 | 190,629 |
| ER Visits | 90,918 | 202,975 | 293,893 |

See Centers for Disease Control and Prevention, *About the Vaccine Adverse Event Reporting System (VAERS)*, <https://wonder.cdc.gov/vaers.html> (last visited Jan. 27, 2022).⁵

25.

All people are not the same for purposes the Covid Vaccines. The benefits and risks vary from person to person based on many factors.

26.

The decision whether to vaccinate is a highly personal choice. It can result in short and long-term injuries and expensive hospitalizations. It raises serious religious and conscientious objections. And it should not be made by government officials based on crude generalizations.

⁵ Because VAERS relies on voluntary reporting, the data should be considered in context. “‘Underreporting’ is one of the main limitations of passive surveillance systems.” Guide to Interpreting VAERS Data, <https://vaers.hhs.gov/data/dataguide.html>.

G

Section 11 The Governor's Response to the Pandemic

27.

The same day the WHO declared a pandemic, Governor Edwards declared a statewide public health emergency under the Louisiana Health Emergency Powers Act, La. R.S. 29:760, *et seq.* See Proclamation No. 25 JBE 2020. Since that time, Governor Edwards has issued a series of legally-questionable orders in response to the pandemic, none of which impose any kind of vaccinate-or-test requirement.

28.

Although the Governor supports the addition of COVID-19 to the student vaccination schedule (a matter now in litigation), he has assured the public that "No child will be forced to be vaccinated against the will of his or her parents," as provided by law. Blake Paterson, *Gov. John Bel Edwards will add COVID vax to school shots list, overriding Louisiana lawmakers*, The Advocate, Dec. 14, 2021, https://www.theadvocate.com/baton_rouge/news/article_1926ebfe-5d21-11ec-9d27-fb72ab61494c.html. See La. R.S. 17:179(E) (allowing "written dissent" to student vaccination); La. R.S. 17:170.1(C)(1) (allowing "personal reasons" exemption for meningitis vaccine); La. R.S. 40:2022 (requiring hospitals to recommend certain vaccines for newborns, but allowing parents to decline).

Defendant's Response to the Pandemic

29.

On March 16, 2020, Mayor Cantrell issued "Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency," which imposed a mask requirement and placed restrictions on public and private gatherings. It was extended on April 16, 2020.

30.

On May 15, 2020, Mayor Cantrell issued "Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19," easing restrictions in response to the waning first wave of the pandemic (the "Reopening Order"). Exhibit B. See City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, May 15, 2021, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/Guidelines/NOHD-Guidelines-for-reopening-May-15-2021-corrected-May-19.pdf>.

G

Section 11

31.

The Reopening Order expressly relies on La. R.S. 29:727(F) and (G) and Section 4-1202 of the Home Rule Charter of the City of New Orleans (the “City Charter”). It is the primary order governing all subsequent actions at issue herein.

32.

On July 30, 2021, the Mayor reinstated the mask mandate and other restrictions in response to the surge of cases caused by the Delta variant. *See* Jeff Adelson, *New Orleans restores mask mandate in COVID surge, requires vaccines for employees*, NOLA.com, Jul. 30, 2021, https://www.nola.com/news/coronavirus/article_2eb474bc-f17b-11eb-b8ff-bf22b0bafb1b.html.

33.

On August 13, 2021, the Health Department issued “Guidelines” implementing the Reopening Order, requiring “anyone 12 years of age or older” to provide proof of having received “at least one dose” of a COVID vaccine or a “negative PCR test within 72 hours of access” to enter restaurants, hotels, bars, indoor gyms and fitness centers, indoor entertainment facilities, and large outdoor events (the “Vaccinate or Test Mandate”). *See* City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Aug. 13, 2021, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-August-13-Vaccine-Requirement-final.pdf>.

34.

On October 29, 2021, the mask mandate was lifted but the Vaccinate-Test Mandate was maintained. *See* City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Oct. 29, 2021, https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-October-29-2021-FINAL_1.pdf.

35.

Meanwhile, in November 2021, the federal government issued a now-enjoined rule through the Occupational Safety and Health Administration imposing a vaccinate-or-test requirement covering over 80 million workers, after announcing its intent to issue this mandate in September 2021, causing a nationwide shortage in the availability of over-the-counter antigen tests. Consequently, any “test” requirement was effectively a fictional option, as such tests were and still

G

Section 11

are largely unavailable. No matter. Omicron quickly rendered such testing useless. DISTRICT COURT

tests are not as sensitive to it and produce large numbers of false negative results.

36.

Notwithstanding widespread new facts about risks of the available vaccine and a lack of facts about vaccinating young children, lack of test availability, a surge in testing demand due to Omicron, the unreliability of antigen tests, and the uselessness of masks, on January 3, 2021, the Health Department expanded the Vaccinate or Test Mandate to include individuals “5 years of age or older.” See City of New Orleans Health Department Guidelines for COVID-19 Reopening, City of New Orleans Department of Health, Jan. 3, 2022, <https://ready.nola.gov/NOLAReady/media/Documents/Coronavirus/NOHD-Guidelines-for-reopening-Jan-3-Final-CDC.pdf>.

37.

On January 12, 2022, the Health Department restated the Vaccinate-or-Test Mandate and reissued a mask mandate for all individuals “over the age of 2 and without breathing complications ... when in indoor spaces outside the household” and “while riding in a vehicle with members outside of the household” (the “Mask Mandate”).⁶ See Guidelines for COVID-19 Reopening (the “Current Guidelines”), Exhibit C (highlights in original, reflecting changes from January 3, 2022).

38.

Effective February 1, 2022, the Vaccinate or Test Mandate will be amended to require proof of full vaccination—all required doses⁷—or proof of testing for the same facilities and activities, but adding Carnival and Marching Clubs parades, and the Mask Mandate will “remain[] in effect for all public indoor spaces” (unlike “indoor spaces outside the home” under the Current Guidelines). See [https://ready.nola.gov/incident/coronavirus/safe-reopening/#:~:text=Beginning%20Tuesday%2C%20February%201st%20for,bars%2C%20and%20other%20businesses%20\(test](https://ready.nola.gov/incident/coronavirus/safe-reopening/#:~:text=Beginning%20Tuesday%2C%20February%201st%20for,bars%2C%20and%20other%20businesses%20(test).

⁶ The federal government recently issued a mask mandate for two-year-olds in Head Start programs, which has been enjoined by federal courts in Louisiana and Texas based in part on declarations that masking children this young is dangerous, impedes speech and language development, and imposes ever harsher burdens on children with disabilities. See *Louisiana v. Becerra*, No. 3:21-cv-4370, --- F.Supp.3d ---, 2022 WL 16571 (W.D. La. Jan. 1, 2022) (covering 25 states), and *Texas v. Becerra*, No. 5:21-cv-0300, 2021 WL 6198109 (N.D. Tex. Dec. 31, 2021).

⁷ “Full vaccination” is a moving goalpost, which will eventually include multiple boosters.

G

Section 11

39.

Violation of the mandates, though nowhere to be found in state law or any municipal ordinance, are purportedly punishable by criminal prosecution and a fine not to exceed \$500 or confinement to jail for up to six months, per offense. *See* Exhibit C at 14.

40.

Further, the Current Guidelines require private facility owners, operators, and employees to act as public enforcement officers or they face criminal prosecution, closure, revocation of permits or certificates of registration, and denial of municipal services—including the “cessation of electrical services.”⁸ Again, such limitations on licensing, access to municipal services, and criminal sanctions are nowhere to be found in state law or the municipal code.

COUNT I

THE VACINATE OR TEST MANDATE VIOLATES THE RIGHT TO PRIVACY UNDER ARTICLE I, SECTION 5 OF THE LOUISIANA CONSTITUTION

41.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

42.

Article 1, § 5, titled “Right to Privacy provides that “[e]very person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy,” La. Const. art. I, § 5.

43.

Louisiana’s constitutional right to privacy “is one of the most conspicuous instances in which our citizens have chosen a higher standard of individual liberty than that afforded by the jurisprudence interpreting the federal constitution.” *State v. Brennan*, 99-2291 (La. 5/16/00); 772 So. 2d 64 (quoting *State v. Hernandez*, 410 So. 2d 1381, 1385 (La. 1982)).

44.

The right to privacy under Article I, § 5 includes “the right to decide whether to obtain or reject medical treatment.” *Hondroulis v. Schuhmacher, M.D.*, 553 So. 2d 398, 410 (La. 1988), *on*

⁸ “Enforcement measures may include, but are not limited to, prohibiting a business from offering take-out services, revocation of a business’s ability to open under these guidelines, revocation of any special event or live entertainment permits, revocation of certificates of registration, misdemeanor charges for owners, managers, and/or staff, and cessation of electrical service to the business. Businesses holding Alcoholic Beverage Outlet permits from the City are also advised that the right to maintain such permits is contingent on the business following all applicable laws, including those contained in any Mayoral Proclamation and in these guidelines or any subsequently issued by the City.” Exhibit C at 14.

G

Section 11

reh'g (La. 1989) (“The decision to obtain or reject medical treatment clearly should be protected as falling within this cluster of constitutionally protected choices.”). *See also Roberson v. Provident House*, 576 So. 2d 992 (La. 1991) (“Recently, this Court concluded that the right to privacy contained in Art. 1, § 5 of the 1974 Louisiana Constitution protects an individual’s right to decide whether to obtain or reject medical treatment” citing *Hondroulis*); *Ciko v. City of New Orleans*, 427 So. 2d 80 (La. App. 4 Cir. 1983) (recognizing that “right to refuse medical treatment ... is protected by law.”).

45.

“The right to decide whether to obtain or to refuse medical treatment is a fundamental right protected by Article I, Section 5 of the 1974 Louisiana Constitution.” *Boyd v. Louisiana Med. Mut. Ins. Co.*, 593 So. 2d 427, 429 (La. App. 1 Cir. 1991), *writ denied*, 594 So. 2d 877 (La. 1992). *See also Hondroulis*, 553 So.2d at 41, and *State v. Perry*, 610 So.2d 746, 760 (La. 1992).

46.

The decision to vaccinate against any disease is a matter of personal privacy protected by Article I, § 5. *See Boyd*. 593 So.2d 427 (involving polio vaccination).

47.

Defendants’ Vaccinate or Test Mandate infringes on the fundamental right to privacy by imposing coercive conditions on the general public, denying access to public accommodations and threatening criminal prosecution as a means to coerce consent to medical treatment. Effectively, it attempts to force compliance by threatening to punish the exercise of a fundamental right.

48.

Strict scrutiny applies to governmental action that “impinges on a fundamental right explicitly or implicitly protected by the constitution.” *Bazley v. Tortorich*, 397 So.2d 475, 483 (La.1981). “[W]here a decision as fundamental as those included within the right of personal privacy is involved, state action imposing a burden on it may be justified only by a compelling state interest, and the state action must be narrowly confined so as to further only that compelling interest. [*Hondroulis*] at 415. Only such strict judicial scrutiny is sufficiently protective of a person’s right of privacy or personhood to avoid unwarranted governmental interference with his body, mind, and medical autonomy.” *State v. Perry*, 610 So.2d at 760.

G

Section 11

49.

There is no compelling interest in coercively mandating vaccination against the COVID-19, particularly when the shot does not prevent transmission of the virus, an acknowledged medical fact the proclamation entirely ignores.

50.

Further, the Vaccinate-or-Test Mandate is not narrowly tailored. Rather, it bluntly applies to *all* demographics regardless of age, risk factors, pre-dispositions, and means of transmission.

51.

The Vaccinate or Test Mandate is facially unconstitutional under Article I, § 5, because it invades the right to individual privacy, which has been found to include the right to refuse medical treatment, and it cannot meet strict scrutiny.

COUNT II

THE VACINATE OR TEST MANDATE VIOLATES THE RIGHT TO EQUAL PROTECTION UNDER ARTICLE 1, SECTION 3 OF THE LOUISIANA CONSTITUTION

52.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

53.

Article I, § 3 guarantees that “[n]o person shall be denied the equal protection of the laws.” La. Const. art. I, § 3.

54.

The function of the equal protection clause is to measure the validity of classifications created by state laws. *Rudolph v. Massachusetts Bay Insurance Co.*, 472 So.2d 901, 904 (La.1985). “The principles for the determination of the constitutionality of a legislative enactment are equally applicable” to ordinances passed by a municipal authority under a home rule charter. *City of Baton Rouge/Par. of E. Baton Rouge v. Myers*, 2013-2011, p. 5 (La. 5/7/14); 145 So.3d 320, 327, citing *Fransen v. City of New Orleans*, 2008-0076 (La.7/1/08), 988 So.2d 225, 233-34.

55.

Where a fundamental right is threatened, the guarantee of equal protection means that “separate classifications are invalid in circumstances where it is not demonstrable that a ‘compelling governmental interest’ exists.” *Everett v. Goldman*, 359 So.2d 1256, 1265-66 (La.1978), quoting *Shapiro v. Thompson*, 394 U.S. 618 (1969).

G

Section 11

56.

“In the traditional equal protection analysis the initial determination is whether a given act disadvantages a suspect class or infringes upon a fundamental right. If it does not, then the act need only rationally further some legitimate, articulated state purpose or goal. This level of scrutiny rarely renders an act constitutionally infirm. However, with a finding that a suspect class or fundamental right is involved, an act will frequently fall short of ‘promoting’ a compelling state interest, the strict scrutiny level of review.” *Clark v. Manuel*, 463 So.2d 1276, 1284 (La.1985).

57.

The Vaccine-or-Test Mandate classifies persons based on vaccination status. Unvaccinated persons are subject to the mandate under pain of criminal sanction. Vaccinated persons are not. This classification scheme threatens the fundamental right to privacy protected by Article I, § 5. Moreover, it applies to children and interferes with the parental authority over children by limiting their access to public places with their children and exposing them to fines and criminal sanctions, thereby interfering with their right to make medical decisions regarding their children. Parental rights are fundamental rights, protected by the State Constitution and jurisprudence.⁹

58.

The Vaccine-or-Test Mandate is neither narrowly tailored nor directed to a compelling governmental purpose. It therefore denies equal protection under Article I, § 3.

COUNT III

THE MASK MANDATE IS VOID FOR VAGUENESS UNDER ARTICLE I, SECTION 2 OF THE LOUISIANA CONSTITUTION

59.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

60.

Article I, § 2 provides: “No person shall be deprived of life, liberty, or property, except by due process of law.” La. Const. art. I, § 2.

61.

“A law is fatally vague and offends due process when a person of ordinary intelligence does not have a reasonable opportunity to know what is prohibited so that he may act accordingly

⁹ Parental rights are recognized as fundamental rights under the federal constitution as well, but this Petition raises only claims arising under the State Constitution, State law, and the City Charter.

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Section 11

or if the law does not provide a standard to prevent arbitrary and discriminatory application.” *Med Exp. Ambulance Serv., Inc. v. Evangeline Parish Police Jury*, 96–0543 (La.11/25/96), 684 So.2d 359, 367, citing *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 487-99 (1982).

62.

“Under the ‘void-for-vagueness’ doctrine, a criminal statute must meet two requirements to satisfy due process: (1) adequate notice to individuals that certain contemplated conduct is proscribed; and (2) adequate standards for those charged with determining the guilt or innocence of an accused.” *State v. David*, 468 So.2d 1126, 1128 (La.1984), supplemented, 468 So.2d 1133 (La.1985).

63.

“A criminal statute must provide adequate standards by which a party may be determined to be guilty or not guilty so that an individual's fate is not left to the unfettered discretion of law enforcement.” *State v. Hair*, 2000-2694, p. 7 (La. 5/15/01); 784 So.2d 1269, 1274, citing *State v. Muschkat*, 96–2922 (La.3/4/98), 706 So.2d 429, 432. “This occurs where a statute either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. In such instances, the statute violates due process of law.” *Hair*, 784 So.2d at 1274, citing *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

64.

The Mask Mandate states: “All individuals over the age of 2 and without breathing complications (*i.e.*, use of oxygen) are subject to an indoor mask requirement and are required to wear a face covering over the nose and mouth[.]” See Exhibit C at 4. This language is impermissibly vague. *First*, the exception for “breathing complications” is not adequately defined. Is it limited to “use of oxygen” as stated parenthetically, or is use of oxygen merely an example? Who decides whether the mask causes breathing complications? How does one demonstrate a child meets this exception? Are other medical complications categorically excluded from the exclusion? *Second*, “face covering” is undefined. A mask is a face covering, but a face covering is not necessarily a mask. And not all masks (or face coverings) are the same. This ambiguity is compounded by the statement that individuals “are subject to an indoor mask requirement *and* are required to wear a face covering...”

G

Section 11

65.

Vagueness in this key requirement results in highly indiscriminate compliance and confrontations between persons subject to the mandate and private individuals conscripted as enforcement officers, all of whom face criminal sanction and civil penalties for noncompliance. Because the mandate purports to carry criminal sanctions, it also invites confrontations with the police, which often escalate and can have other consequences for the parent and child relationship.

66.

The Mask Mandate facially offends Due Process.

COUNT IV

THE ENFORCEMENT PROVISION UNLAWFULLY CONSCRIPTS PRIVATE PERSONS IN VIOLATION OF ARTICLE I, SECTION 2 OF THE LOUISIANA CONSTITUTION

67.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

68.

Article I, § 2 provides: “No person shall be deprived of life, liberty, or property, except by due process of law.” La. Const. art. I, § 2.

69.

“The conscription of manpower is a more vital interference with the life, liberty and property of the individual than is the conscription of his property or his profits or any substitute for such conscription of them.” *Lichter v. United States*, 334 U.S. 742, 756 (1948).

70.

Defendants’ mandates are expressly directed to the individuals subjected to the requirements. But to enforce the mandates, business owners, operators and employees are conscripted to act as public enforcement officers under threat of criminal prosecution and other harsh penalties, such as revocation of permits and termination of utility services.

71.

There is *no authority* permitting Defendants to impose such a requirement on members of the public. Even the City Charter imposes limits on the City Council regarding “limited prohibitions” that may be applied to license and permit holders.

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Section 11

72.

The enforcement requirements directed to third-party individuals and business violates the due process guarantee of Article I, § 2.

COUNT V

THE VACCINE-OR-TEST MANDATE FACIALLY VIOLATES THE SEPARATION OF POWERS

73.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

74.

It is a fundamental tenant of constitutional law that there are three branches of government and no one can exercise powers allotted to the others. La. Const. art. II, § 1. The legislative branch makes the laws under Article III, and the executive branch enforces them under Article IV. This structural limitation applies with equal force to a local government under a home rule charter. *See* La. Const. art. VI, § 5(A) (“Subject to and not inconsistent with this constitution, any local government subdivision may draft, adopt, or amend a home rule charter in accordance with this Section.”). *Morial v. Council of City of New Orleans*, 413 So.2d 185, 188 (La. Ct. App.1982), writ denied, 420 So.2d 170 (La.1982) (“The [New Orleans Home Rule] Charter clearly intended a separation of powers”).

75.

Following this structure, the City Charter provides: “All legislative powers of the City shall be vested in the Council and exercised by it in the manner and subject to the limitations hereinafter set forth.” Home Rule Charter of the City of New Orleans, Art. III, § 3-101.

76.

For executive powers: “All executive and administrative powers of the City shall be vested in and exercised by the Executive Branch.” Home Rule Charter of the City of New Orleans, Art. IV, § 4-101. Under Section 4-206, the Mayor is “the chief executive officer of the City” and charged with administering executive power.

77.

Although the procedures may be suspended, this structural constitutional limit on *who* has authority to make law *cannot* be suspended, even in an emergency. *See* La. R.S. 29:727(F)(1) (providing for suspension of regulatory ordinances during declared emergency);

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Section 11

78.

The Mayor's proclamation purports to create new laws which carry both civil and criminal penalties. Nothing in the State constitution, state law, or the City Charter permits the Mayor to make *new* municipal laws. Only the City Council has this authority. Plaintiffs are unaware of any municipal law that contains any of the restrictions imposed or sanctions attached thereto (including threatening to cut off sewer, water, or electricity services).

COUNT VI

UNCONSTITUTIONAL DELEGATION OF POWER IN VIOLATION THE SEPARATION OF POWERS AS APPLIED

79.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

80.

The Louisiana Supreme Court has long recognized that a legislative body cannot delegate unbounded legislative authority to the executive branch. *Krielow v. Louisiana Dep't of Agric. & Forestry*, 2013-1106, p. 5 (La. 10/15/13); 125 So.3d 384, 388 ("legislative power, conferred under constitutional provisions, cannot be delegated by the Legislature either to the people or to any other body of authority"). Any such attempt at open-ended, unbounded delegation of legislative authority is an unconstitutional violation of the separation of powers. *Id.*; *City of Alexandria v. Alexandria Fire Fighters Assn.*, 220 La. 754, 57 So.2d 673 (1952). "Delegation of purely legislative authority violates the separation of powers, but the delegation of ministerial or administrative authority does not." *State v. McKey*, 16-270 (La.App. 5 Cir. 5/24/16), writ denied, 2016-1195 (La. 10/10/16); 207 So.3d 405, *State v. All Pro Paint & Body Shop, Inc.*, 93-1316, pp. 5-6 (La.7/5/94), 639 So.2d 707, 711.

81.

The Mayor's proclamation points to only two bases for authority: State law under Title "29:721, et.seq." and, more specifically, La. R.S. 29:727(F)(7) (power to control ingress and egress) (See Mayoral Proclamation, No. 2020-3129) and the power granted to the Department of Health under the City Charter in Section 4-1202. But *neither* grant her unlimited power, *as neither could* without violating separation of powers. Neither grant her the power to make law, which is expressly a power reserved to the City Council under the Charter, and therefore limits the scope of both the Mayor and the Health Departments powers. Indeed, the very idea that the Mayor can exercise unlimited power to make things up as she goes along, attach criminal sanctions to such

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Section 11

new legislative rules, and then enforce them through the police, zoning, and other licenses with no temporal or substantive limits is the very definition of an unconstitutional delegation of legislative authority that is repugnant to the separation of powers in both the State Constitution and the City Charter.

82.

The Mayor is plainly applying La. R.S. 29:727(F)(7) and Section 4-1202 of the City Charter in violation of the nondelegation doctrine.

RELIEF

DECLARATORY JUDGMENT

83.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

84.

“Courts of record within their respective jurisdiction may declare rights, status, and other legal relations whether or not further relief is or could be claimed.” La. C.C.P. art. 1871. Declaratory judgment is proper to determine “any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder” (La. C.C.P. art. 1872) in order to “remove the uncertainty or terminate the dispute.” *Louisiana Associated Gen. Contrs. v. State ex rel. Div. of Admin., Office of State Purchasing*, 95-2105 (La. 3/8/96); 669 So. 2d 1185, 1191.

85.

Plaintiffs are entitled to a judgment declaring the Defendants’ Vaccinate or Test Mandate unlawful.

INJUNCTIVE RELIEF: TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMENANT INJUCTION

86.

Plaintiffs repeat and incorporate by reference each of the allegations stated above.

87.

Under La. C.C.P. art. 3601, “[a]n injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant[.]” *Newburger v. Orkin, L.L.C.*, 2019-383, p. 7 (La. App. 3 Cir. 11/6/19); 283 So. 3d 549, 554. “Irreparable harm or injury generally refers to a loss that cannot be adequately compensated in money damages or measured by a pecuniary standard.” *Id.*

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Section 11

88.

“A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right., 555 So. 2d 1370 (La.1990). Once a plaintiff has made a prima facie showing that the *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm’n* conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists.” *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99); 749 So. 2d 597, 599–600.

Temporary Restraining Order

89.

Louisiana Code of Civil Procedure article 3603 provides for issuance of a temporary restraining order without notice when:

(1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

B. The verification or the affidavit may be made by the plaintiff, or by his counsel, or by his agent.

90.

“A TRO serves only as a temporary restraint on the defendant until the propriety of granting a preliminary injunction may be determined, objectively preserving the status quo until that determination. *Powell v. Cox*, 228 La. 703, 83 So. 2d 908, 910 (1955). It is issued preliminary to a hearing and wholly independent from the hearing on a preliminary injunction. *Id.* A TRO does not determine any controverted right, but issues as a preventative to a threatened wrong and operates as a restraint to protect the rights of all parties involved until issues and equities can be resolved in a proper subsequent proceeding. *Id.*” *Dauphine v. Carencro High Sch.*, 2002-2005, p. 6 (La. 4/21/03); 843 So. 2d 1096, 1102.

91.

Entry of a TRO enjoining enforcement of the Vaccine or Test Mandate is warranted in this instance. First, the mandate threatens irreparable, irreversible harm to individuals and is facially

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Section 11

unconstitutional. Second, the delays for formal service and for responsive pleadings will result in further irreparable harm to individuals unlawfully compelled to comply. Third, the balance of interest favors issuance of a TRO, as relieving Plaintiffs and others of the oppressive and unlawful mandate will cause no harm to Defendants during the duration of the TRO.

92.

Bond should not be required as entry of a TRO poses no threat of damage or hardship to Defendants.

Preliminary and Permanent Injunction

93.

“The purpose of a preliminary injunction is to preserve status quo until trial on merits].” *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 2004-0211, p. 5 (La. 3/18/04); 867 So. 2d 651, 655.

94.

“A moving party is entitled to a preliminary injunction upon showing: (1) that the injury, loss, or damage he will suffer if the injunction is not issued may be irreparable; (2) that he is entitled to the relief sought; and (3) that he will be likely to prevail on the merits of the case.” *Succession of Smith v. Portie*, 2019-283, p.4 (La. App. 3 Cir. 12/30/19); 289 So. 3d 77, 80 (quoting *St. Raymond v. City of New Orleans*, 99-2438, p. 3 (La. App. 4 Cir. 5/17/00); 769 So. 2d 562, 564 *rehearing denied* 99-2438 (La. App. 4 Cir. 8/2/00), 775 So. 2d 31, *writ denied* 00-2565 (La. 9/13/00), 767 So. 2d 697). Because it involves temporary relief pending a full trial on the merits, a “preliminary injunction requires less proof than is required in an ordinary proceeding for permanent injunction.” *Succession of Smith*, 289 So. 3d at 80 (quoting *Breaud v. Amato*, 94-1054, p. 5 (La. App. 5 Cir. 5/30/95); 657 So. 2d 1337, 1339). Plaintiff need only demonstrate “a prima facie showing” that he is entitled to relief. *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, 03-2220 (La.4/14/04); 875 So. 2d 22.

95.

The violation of constitutional rights is an irreparable harm. Plaintiffs, on the face of this petition, have demonstrated continuous violations of their constitutional rights that are ongoing and causing irreparable harm. The status quo is restoration of their liberty and prohibiting the ongoing threat of criminal and civil penalties arising from the unconstitutional orders of the Mayor.

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Section 11

96.

Plaintiffs request entry of a preliminary injunction following a hearing on the matter and, in due course, a permanent injunction following trial on the merits.

WHEREFORE, Plaintiffs pray as follows

1. For entry of a Temporary Restraining Order in the form presented herewith restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022;
2. That this Petition be served as required by law;
3. That Defendants be cited to appear, answer and respond;
4. That after due proceeding be had, for entry of a Declaratory Judgment in favor of Plaintiffs and against Defendants declaring the vaccinate-or-test requirements and the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 unlawful and unenforceable; and
5. For issuance of a Preliminary Injunction and thereafter a Permanent Injunction prohibiting enforcement of the unlawful requirements.

Respectfully submitted,

FAIRCLOTH MELTON SOBEL & BASH, LLC

By: 

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Facimile: (504) 399-1813

ATTORNEYS FOR PLAINTIFFS

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Section 11 PLEASE RUSH SERVICE TO:

**LaToya Cantrell, City of New Orleans,
New Orleans Health Department, and Jennifer Avegno, M.D
Through the New Orleans City Attorney
Donesia D. Turner
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112**

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Section 11

DOCKET NO. _____
DIVISION _____
SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as
Mayor of the City of New Orleans; THE CITY OF
NEW ORLEANS; NEW ORLEANS HEALTH
DEPARTMENT; and JENNIFER AVEGNO,
M.D., in her official capacity as Director of Health
for the New Orleans Health Department.

STATE OF LOUISIANA

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE
ON PRELIMINARY INJUNCTION

It appearing from the verified Petition for Temporary Restraining Order (TRO), Preliminary and Permanent Injunctions, and Declaratory Judgment filed by Plaintiffs in the above-caption matter that Plaintiffs are substantially likely to prevail on their challenges against the requirements for proof of vaccination or testing ("vaccine-or-test") for COVID-19 under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs' request for a preliminary injunction;

It further appearing that Plaintiffs are substantially likely to prevail on their challenges against the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs' request for a preliminary injunction;

It further appearing that Plaintiffs are substantially likely to prevail on their challenges against the third-party enforcement requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022, that irreparable harm will likely occur in the absence of immediate relief, and that neither the Defendant nor the public will be disserved by issuance of a temporary restraining order pending a hearing on Plaintiffs' request for a preliminary injunction; the third-party enforcement provisions of the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 unlawfully conscript

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Section 11

private citizens and businesses into public service in violation of Article I, § 2 of the Louisiana Constitution;

CONSIDERING THE ABOVE AND FOREGOING, verified Petition:

IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the vaccinate-or-test requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 Mayor's Vaccine Mandate;

IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire at the end of ten (10) days from the date and time stated below, unless otherwise terminated or extended by this Court for good cause;

IT IS FURTHER ORDERED that Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D, appear and show cause on the _____ day of February, 2022 at _____ o'clock a.m./p.m. why preliminary injunctive relief should not be granted enjoining the vaccinate-or-test requirement and the mask requirement requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 pending a trial on permanent injunctive relief.

THUS DONE AND SIGNED in New Orleans, Louisiana this ____ day of February, 2022 at _____ o'clock ____ .m.

HONORABLE JUDGE, CIVIL DISTRICT COURT

PLEASE RUSH SERVICE TO:
LaToya Cantrell, New Orleans Health Department, and
Jennifer Avegno, M.D
Through the New Orleans City Attorney
Donnie D. Turner
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

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Section 11

FILED

2022 JAN 31 P 07:27

CIVIL

DISTRICT COURT

DOCKET NO. _____

DIVISION _____

SECTION _____

CHYNA ANDREWS, ET AL

CIVIL DISTRICT COURT

VERSUS

PARISH OF ORLEANS

LaTOYA CANTRELL, in her official capacity as
Mayor of the City of New Orleans; THE CITY OF
NEW ORLEANS; NEW ORLEANS HEALTH
DEPARTMENT; and JENNIFER AVEGNO,
M.D., in her official capacity as Director of Health
for the New Orleans Health Department.

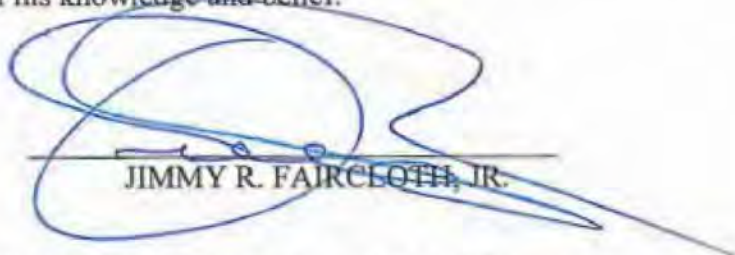
STATE OF LOUISIANA

AFFIDAVIT OF VERIFICATION

PARISH OF RAPIDES

STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, came and appeared JIMMY R. FAIRCLOTH JR., counsel for Plaintiffs in the above-captioned matter, who being duly sworn did depose and state that he prepared the foregoing Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Declaratory Judgment, and all statements of fact contained therein are true and correct to the best of his knowledge and belief.


JIMMY R. FAIRCLOTH, JR.

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, this 31st day of January,
2022, in Alexandria, Louisiana.


NOTARY PUBLIC



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Section 11

EXHIBIT A PLAINTIFF LIST

- 1) Melanie Aertker, a person of the full age of majority, residing in Jefferson Parish.
- 2) Maria Coletta Sanchez Almerico, a person of the full age of majority, residing in Orleans Parish.
- 3) Kristy M Amedee, a person of the full age of majority, residing in Jefferson Parish.
- 4) Chyna Andrews, a person of the full age of majority, residing in Orleans Parish.
- 5) Michel Asprodites, a person of the full age of majority, residing in Orleans Parish.
- 6) Francis Asprodites, a person of the full age of majority, residing in Orleans Parish.
- 7) Maysa Alavi, a person of the full age of majority, residing in Orleans Parish.
- 8) Emily Barber, a person of the full age of majority, residing in Jefferson Parish.
- 9) Mona Beckett, a person of the full age of majority, residing in Orleans Parish.
- 10) Debi Benoit, a person of the full age of majority, residing in Orleans Parish.
- 11) Callie Bergeron, a person of the full age of majority, residing in Orleans Parish.
- 12) Catherine "Katie" Knoll Blouin, a person of the full age of majority, residing in Orleans Parish.
- 13) Darcie Boudreaux, a person of the full age of majority, residing in Jefferson Parish.
- 14) Ranada D. Boykin, a person of the full age of majority, residing in Tangipahoa Parish.
- 15) Tytti Brumfield, a person of the full age of majority, residing in Jefferson Parish.
- 16) Andrea Baraya Burlette, a person of the full age of majority, residing in Jefferson Parish.
- 17) Charles Burlette, a person of the full age of majority, residing in Jefferson Parish.
- 18) Brittani Hebert Cagle, a person of the full age of majority, residing in Jefferson Parish.
- 19) Melanie Castle, a person of the full age of majority, residing in Orleans Parish.
- 20) Erin Cazes, a person of the full age of majority, residing in Orleans Parish.
- 21) Erin Cerise, a person of the full age of majority, residing in Jefferson Parish.
- 22) Samantha Crayon, a person of the full age of majority, residing in Orleans Parish.
- 23) Mandy Landry Clement, a person of the full age of majority, residing in Iberia Parish.
- 24) Katie Cordes, a person of the full age of majority, residing in Orleans Parish.
- 25) Lane-Larkin Davis, a person of the full age of majority, residing in Orleans Parish.
- 26) Angelia Desselle, a person of the full age of majority, residing in Jefferson Parish.
- 27) Brittany Develle, a person of the full age of majority, residing in Jefferson Parish.
- 28) Kimberly Dominguez, a person of the full age of majority, residing in Orleans Parish.

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Section 11

Madaline Dowd Donelon, a person of the full age of majority, residing in Jefferson Parish.

- 30) Brett DuMontier, a person of the full age of majority, residing in Orleans Parish.
- 31) Joel F. Duran, a person of the full age of majority, residing in Jefferson Parish.
- 32) Tamara Edie, a person of the full age of majority, residing in Jefferson Parish.
- 33) Melanie Ford, a person of the full age of majority, residing in Jefferson Parish.
- 34) Derek Fossier, a person of the full age of majority, residing in Orleans Parish.
- 35) Emily Foster, a person of the full age of majority, residing in Orleans Parish.
- 36) Susan Freeswick, a person of the full age of majority, residing in Jefferson Parish.
- 37) Marion George, a person of the full age of majority, residing in Orleans Parish.
- 38) Linda Marie Gielec, a person of the full age of majority, residing in Orleans Parish.
- 39) Cheri Gimenez, a person of the full age of majority, residing in Orleans Parish.
- 40) Colleen Collord Gowland, a person of the full age of majority, residing in Orleans Parish.
- 41) Emily Greer, a person of the full age of majority, residing in Orleans Parish.
- 42) Katie Green, a person of the full age of majority, residing in East Baton Rouge Parish.
- 43) Stephanie R. Grueninger, a person of the full age of majority, residing in St. Bernard Parish.
- 44) Troy W. Grueninger, a person of the full age of majority, residing in St. Bernard Parish.
- 45) Erin Farrell Haik, a person of the full age of majority, residing in Orleans Parish.
- 46) Chris Harmon, a person of the full age of majority, residing in Orleans Parish.
- 47) Laurie Harmon, a person of the full age of majority, residing in Orleans Parish.
- 48) Eliza Henson, a person of the full age of majority, residing in Orleans Parish.
- 49) Michael Raymond Henson, a person of the full age of majority, residing in Orleans Parish.
- 50) Marcus P Heuchan, a person of the full age of majority, residing in Jefferson Parish.
- 51) Hannah Blanche Henson, a person of the full age of majority, residing in Orleans Parish.
- 52) Leigh Hoke, a person of the full age of majority, residing in Jefferson Parish.
- 53) Martha Huckabay, a person of the full age of majority, residing in Jefferson Parish.
- 54) Jeannine Jacob, a person of the full age of majority, residing in Orleans Parish.
- 55) Lori Kabbani-Penny, a person of the full age of majority, residing in Jefferson Parish.
- 56) Erin Kenning, a person of the full age of majority, residing in Jefferson Parish.

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Section 11 Michelle Krajcer, a person of the full age of majority, residing in Jefferson Parish.

- 58) Kelly LaCrosse, a person of the full age of majority, residing in Orleans Parish.
- 59) Elizabeth Landry, a person of the full age of majority, residing in Orleans Parish.
- 60) Dr. Matthew Levy, a person of the full age of majority, residing in Jefferson Parish.
- 61) Dr. Emily Levy, a person of the full age of majority, residing in Jefferson Parish.
- 62) Emily Schmidt Martyn, a person of the full age of majority, residing in Orleans Parish.
- 63) Nicole Masson, a person of the full age of majority, residing in Orleans Parish.
- 64) Stephanie Matranga, a person of the full age of majority, residing in Jefferson Parish.
- 65) Emily V. McElrath, a person of the full age of majority, residing in Jefferson Parish.
- 66) Jamie McEvoy, a person of the full age of majority, residing in Jefferson Parish.
- 67) Jennifer Harris Mitchell, a person of the full age of majority, residing in Jefferson Parish.
- 68) Jennifer Monaghan, a person of the full age of majority, residing in Jefferson Parish.
- 69) Amy Moon, a person of the full age of majority, residing in St. Tammany Parish.
- 70) Katie Strain Moro, a person of the full age of majority, residing in Jefferson Parish.
- 71) Dr. Melissa Arceneaux Myers, a person of the full age of majority, residing in Jefferson Parish.
- 72) Natalie Nagim, a person of the full age of majority, residing in Orleans Parish.
- 73) Donna Oster, a person of the full age of majority, residing in St. Tammany Parish.
- 74) Angela Patrias, a person of the full age of majority, residing in Orleans Parish.
- 75) Rachel Marie Pedeaux, a person of the full age of majority, residing in Orleans Parish.
- 76) Ashley Penick, a person of the full age of majority, residing in Jefferson Parish.
- 77) Jacob Penick, a person of the full age of majority, residing in Jefferson Parish.
- 78) Traci Ponder, a person of the full age of majority, residing in Jefferson Parish.
- 79) Raine Bonura Prado, a person of the full age of majority, residing in Jefferson Parish.
- 80) Paige Prechter, a person of the full age of majority, residing in Orleans Parish.
- 81) Paul Prechter, a person of the full age of majority, residing in Orleans Parish.
- 82) Tamra Roney, a person of the full age of majority, residing in Jefferson Parish.
- 83) Suzanne Tonti Rouse, a person of the full age of majority, residing in Jefferson Parish.
- 84) Jennifer Russell, a person of the full age of majority, residing in Jefferson Parish.
- 85) Robert Combel Ryan, MD, a person of the full age of majority, residing in Jefferson Parish.
- 86) Yvette Salkeld, a person of the full age of majority, residing in Jefferson Parish.

G**Section 11**

- 87) Vincent Scelfo, a person of the full age of majority, residing in Orleans Parish.
- 88) Ashley Buckman Schepens, a person of the full age of majority, residing in Jefferson Parish.
- 89) Amy Schneider, a person of the full age of majority, residing in Orleans Parish.
- 90) Carli Beckett Simpson, a person of the full age of majority, residing in Orleans Parish.
- 91) Peter Smith, a person of the full age of majority, residing in Orleans Parish.
- 92) Katherine Staiger, a person of the full age of majority, residing in Jefferson Parish.
- 93) Dawn Storms, a person of the full age of majority, residing in Jefferson Parish.
- 94) Brent Theriot, a person of the full age of majority, residing in Orleans Parish.
- 95) Rachel Porta Theriot, a person of the full age of majority, residing in Orleans Parish.
- 96) Kaitlynn Candies Thompson, a person of the full age of majority, residing in Orleans Parish.
- 97) LJ Trascher, a person of the full age of majority, residing in Jefferson Parish.
- 98) Lauren Trostorff, a person of the full age of majority, residing in Orleans Parish.
- 99) Lacey Lissarrague Watler, a person of the full age of majority, residing in Orleans Parish.
- 100) Michelle Karen Wax, a person of the full age of majority, residing in Orleans Parish.
- 101) Amy Nunez Williams, a person of the full age of majority, residing in Orleans Parish.
- 102) Sarah Worsley, a person of the full age of majority, residing in Orleans Parish.

Section 11 CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

CIVIL
DISTRICT COURT

NO.: 2020-3/29

DIVISION: F

SECTION NO.: 7

CITY OF NEW ORLEANS

FILED: _____

DEPUTY CLERK

**MAYORAL PROCLAMATION TO FURTHER PROMULGATE
EMERGENCY ORDERS DURING THE STATE OF EMERGENCY
DUE TO COVID-19**

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*, confers upon the Mayor of the City of New Orleans emergency powers to deal with emergencies and disasters, including those resulting from terrorist events, enemy attack, sabotage, or other hostile action, or from fire, flood, earthquake, or other natural or manmade causes, in order to ensure that preparations of this City will be adequate to deal with such emergencies or disasters, and in order to detect, prevent, prepare for, investigate, respond to, or recover from these events, and to preserve the lives and property of the people of the City of New Orleans; and

WHEREAS, the United States has confirmed cases of individuals who have a severe acute respiratory disease ("COVID-19") caused by a novel coronavirus ("the virus") first detected in Wuhan, Hubei Province, People's Republic of China, which was first reported on December 31, 2019; and

WHEREAS, as of May 14, 2020, the World Health Organization ("WHO") has reported more than 4,200,000 confirmed cases of COVID-19 and over 294,000 deaths from the virus; and

WHEREAS, on March 9, 2020, the first presumptive positive case of COVID-19 was announced in the State of Louisiana, in a hospital in the City of New Orleans; and

WHEREAS, on March 11, 2020, the WHO declared the COVID-19 outbreak a pandemic; on March 13, 2020, President Trump declared a National Emergency for the United States; on March 11, 2020, Governor John Bel Edwards declared a state of emergency for the State of Louisiana; and on March 11, 2020, I declared a state of emergency in the City of New Orleans due to COVID-19; and

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Section 11 WHEREAS, as of March 16, 2020, there were 95 presumptive positive cases of COVID-19 in the City of New Orleans, three of which resulted in patient deaths; and

WHEREAS, on March 16, 2020, I issued a Mayoral Proclamation to Promulgate Emergency Orders During the State of Emergency due to COVID-19 in an effort to implement the guidelines of the Centers for Disease Control and Prevention ("CDC") and mitigate the further spread of COVID-19; and

WHEREAS, as of April 14, 2020, there were 5,718 confirmed positive cases of COVID-19 in the City of New Orleans, 276 of which resulted in patient deaths, and the public health and safety threats of COVID-19 continued despite the Emergency Orders in place since March 16, 2020, so I issued a Mayoral Proclamation to Further Promulgate Emergency Orders on April 15, 2020; and

WHEREAS, as of May 14, 2020, there have been 6,768 positive cases of COVID-19 in the City of New Orleans, 482 of which have resulted in patient deaths; and

WHEREAS, the direct and definite public health and safety threats of COVID-19, and the related threats to the health, safety, and welfare of the residents of the City of New Orleans, are ongoing and emergency action must continue to be taken to slow the spread of COVID-19, protect the ability of public and private health care providers to handle the influx of new patients, and safeguard the public health and safety of the people of the City of New Orleans; and

WHEREAS, upon obtaining evidence of sustained positive trends in the public health data being gathered by state and local public health officials and evidence of improved capabilities of the public health system to test for and trace the spread of additional positive cases of COVID-19, the restrictions in the Emergency Orders imposed on April 15, 2020, can be eased; and

WHEREAS, as of May 14, 2020, evidence of sustained positive trends and improved capabilities is beginning to appear in the data, but the risk of a spike in COVID-19 cases or deaths necessitates the use of a phased approach to easing the restrictions in place, with flexibility provided to the public health professionals to immediately respond to circumstances in real time and adjust the restrictions if necessary, with adjustments based only on public health data, guidance of the CDC and state health department, or applicable law; and

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Section 11 WHEREAS, La. R.S. 29:727(F) authorizes the Mayor to “[c]ontrol ingress and

egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein,” to “[s]uspend or limit the sale, dispensing, or transportation of alcoholic beverages . . . ,” and to “[s]uspend the provisions of any regulatory ordinance prescribing the procedures for conduct of local business, or the orders, rules, or regulations of any local agency, if strict compliance with the provisions of any ordinance, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, La. R.S. 29:727(G) provides that “any person or representative of any firm, partnership, or corporation violating any order, rule, or regulation promulgated pursuant to this Chapter, shall be fined not more than five hundred dollars, or confined in the parish jail for not more than six months, or both”;

NOW THEREFORE, I, LaTOYA CANTRELL, Mayor and Chief Executive Officer of the City of New Orleans and the Parish of Orleans, by virtue of the authority vested in me as the Mayor of the City of New Orleans by the Constitution and laws of the State of Louisiana and the Home Rule Charter and laws of the City of New Orleans, do hereby promulgate and issue the following orders, which shall be effective May 16, 2020, commencing at 6:01 a.m. and remain in effect until terminated by Mayoral Proclamation.

1. The following orders shall remain in place unless they are eased in accordance with the phased-in approach authorized herein:
 - a. All public and private gatherings shall be canceled or prohibited in non-emergency situations and where possible. In limited circumstances, personal gatherings should be limited to the number of persons in a reasonable household size. This shall not apply to healthcare facilities, pharmacies, grocery stores, corner stores, banks, gas stations, and other essential service providers. Loitering outside of any of these essential service providers shall be prohibited. This order shall remain in place until Health Department regulations provide otherwise.
 - b. All Bars, Health Clubs (e.g., gyms and fitness centers), Shopping Centers configured as malls (but not strip centers), Live Performance Venues, Reception Facilities, and other establishments where large

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Section 11

gatherings routinely occur and/or where the risk of possible COVID-19 spread exists, shall cease operations, until Health Department regulations provide otherwise.

- c. All Restaurants, as defined in the Comprehensive Zoning Ordinance, shall limit their operations to take out and delivery only, including the sale of alcohol in accordance with City and State issued permits, until Health Department and/or Department of Safety and Permits regulations provide otherwise.
- d. To the extent individuals are using shared or outdoor spaces, they shall at all times as reasonably possible comply with COVID-19 guidelines provided by the CDC and local and state health departments when they are outside their residence.

2. Pursuant to the authority provided to the Mayor of New Orleans in La. R.S. 29:727(F)(7) to “[c]ontrol ingress and egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein,” and in accordance with the authority provided to the Department of Health by Section 4-1202 of the Home Rule Charter of the City of New Orleans to “[a]dopt and enforce local health and sanitary regulations” and “institute measures for the control of epidemic, preventable and communicable disease,” I hereby order the Director of Health of the City of New Orleans to promulgate temporary regulations governing the movement of persons and the occupancy of premises within the City of New Orleans based on COVID-19 circumstances within the City of New Orleans and COVID-19 guidance from the CDC and state health department. Such temporary regulations shall also comply with the following provisions:

- a. The temporary regulations shall establish rules and procedures to safely and gradually ease restrictions in clearly delineated phases based on specific and verifiable public health milestones.
- b. Transitions between phases shall be effectuated via Public Health Advisory, which shall be given prompt and general publicity.

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Section 11

- c. The temporary regulations shall provide for the option to return to a phase with stricter restrictions if there is a spike in the number of COVID-19 cases or deaths or a sustained negative trend in the public health data that warrants such a return.
3. Pursuant to the authority provided the Mayor of New Orleans in La. R.S. 29:727(F)(7) to "[c]ontrol ingress and egress to and from the affected area, the movement of persons within the area, and the occupancy of premises therein," I hereby authorize and order the Department of Safety and Permits to promulgate temporary regulations governing the administration of the Comprehensive Zoning Ordinance ("CZO") and the occupancy of premises within the City of New Orleans in accordance with these orders and in conjunction with the temporary regulations promulgated by the Director of Health as authorized and directed herein. In order to allow businesses to reopen in compliance with spatial guidance from public health authorities, such temporary regulations may temporarily suspend provisions of the CZO or provide for temporary permits, or both, to accommodate the use of outdoor space, including public rights-of-way, but only in accordance with COVID-19 guidance from the CDC and state health department and applicable law.
4. The temporary regulations and any Public Health Advisory promulgated or issued as authorized herein shall have the effect of a temporary emergency order issued by the Mayor of the City of New Orleans as authorized by La. R.S. 29:727 and shall be given prompt and general publicity. Section 2-1000 of the City Code is hereby suspended relative to COVID-19-related departmental regulations promulgated pursuant to this Mayoral Proclamation.

The City Attorney is hereby directed to file this proclamation promptly in the office of the Clerk of Court and arrange for it to be given prompt and general publicity.

WITNESS my hand in New Orleans, Louisiana, this fifteenth (15th) day of May, 2020.



 LaTOYA CANTRELL, MAYOR

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Section 11

LATOYA CANTRELL
MAYOR

JENNIFER AVEGNO, MD
DIRECTOR OF HEALTH

DEPARTMENT OF HEALTH
CITY OF NEW ORLEANS

GILBERT MONTAÑO
CHIEF ADMINISTRATIVE OFFICER

CHANTELL REED, MSHCM
DEPUTY DIRECTOR OF HEALTH

CITY OF NEW ORLEANS HEALTH DEPARTMENT

GUIDELINES FOR COVID-19 REOPENING

January 12, 2022

I. PURPOSE

Mayor LaToya Cantrell issued a "Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19" ("Mayoral Proclamation") on May 15, 2020, which allows the City of New Orleans to enter into a phased reopening of businesses following a two month Stay at Home Mandate. These phases will continue to prohibit certain activities in the interest of public health and to prevent the further spread of the SARS-CoV-2 virus. The New Orleans Health Department provides this document to aid in the interpretation and implementation of the May 15, 2020 Mayoral Proclamation and to provide guidance and mandates for residents and businesses in the City of New Orleans.

II. FACTUAL BACKGROUND

SARS-CoV-2, the virus that causes Coronavirus 2019 Disease ("COVID-19") is a communicable respiratory disease that can be easily transmitted especially in group settings. It is believed to be spread easily amongst the population by various means of exposure, including person to person transmission and attaching to surfaces for prolonged periods of time. Due to the contagious nature of the virus and emerging scientific evidence regarding transmission, non-pharmacological interventions are indicated to slow the spread of the virus, such as physical and social distancing, increased sanitation protocols, and use of personal protective equipment as much as possible while in public. Slowing transmission through these measures safeguards public health and safety, protects the most vulnerable populations that have been disproportionately affected by COVID-19, and protects the ability of health care providers to avoid surge conditions in response to an influx of patients. As a novel virus, there is a limited scientific understanding of this virus, and measures specific to reducing harm from COVID-19 must be guided by sound evidence-based research as it emerges. One known proven way to slow transmission is to limit interactions among people to the greatest extent practicable through non-pharmacological interventions such as those described above.

Another proven way to slow the spread of COVID-19 is through vaccination. The U.S. Centers for Disease Control and Prevention ("CDC") has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into

EXHIBIT C

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Section 11

contact with, including persons who for reasons of age cannot themselves be vaccinated

Due to the direct and definitive threat to public health and safety from COVID-19, Mayor LaToya Cantrell has taken emergency actions to mitigate the effects and prevent further deaths and illness for the people of the City of New Orleans from COVID-19. On March 11, 2020, Mayor Cantrell filed a "Mayoral Proclamation of a State of Emergency Due to COVID-19," which allowed Mayor Cantrell to exercise the emergency authorities provided to the Mayor in La. R.S. 29:727, and in coordination with state and federal agencies, to thoroughly prepare for and respond to the COVID-19 emergency. Following the dramatic increase in the number of positive cases in New Orleans, from one (1) case on March 9, 2020 to seventy-five (75) cases and two deaths in Orleans Parish as of March 15, 2020, Mayor Cantrell filed the March 16, 2020 Mayoral Proclamation to impose restrictions on public and private gatherings, to close businesses where large gatherings routinely occur, and to limit restaurant operations to take out and delivery. On April 16, 2020, there were 5,847 positive cases and 302 deaths due to COVID-19; therefore, Mayor Cantrell extended the Mayoral Proclamation due to the continued high number of new cases and deaths.

On May 15, 2020, Mayor Cantrell issued a Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19, which extends the April 15th restrictions until Health Department guidance provides otherwise. The Proclamation directs the Department of Health to promulgate temporary regulations to introduce a phased approach to easing the restrictions in place, with flexibility provided to the public health professionals to immediately respond in real time and adjust restrictions if necessary with adjustments based on public health data, guidance of the CDC and State health department, or applicable law.

III. PUBLIC HEALTH MILESTONES

As of May 15, 2020, the City of New Orleans had met the public health milestones for entering a phased reopening process as described by evidence-based guidance for jurisdictions and health departments issued by the World Health Organization, White House, Centers for Disease Control and Prevention (CDC), and Johns Hopkins University. This guidance identifies when it may be safe to enter a phased easing of restrictions, which allows the reopening of some businesses during the COVID-19 emergency. It requires jurisdictions to meet the following four public health milestones in order to enter a phased reopening process. The four public health milestones and thresholds are currently defined as follows.

Sustained decrease in number of new cases

Jurisdictions must see a downward trajectory of documented cases within a 14 to 21-day period. The New Orleans Health Department will continue to monitor new positive cases to determine the need to reissue restrictions if cases increase above 50 per day (averaged over at least 3 days) or consecutive increase in cases for more than 5 days. The positivity rate showing the percent of new cases over the total number of tests reported and the R0 which shows the transmission rate will also be factors to consider. The positivity rate should fall below 5% and R0 should remain at or below 1.0. As of January 7, 2022, case counts, positivity rate, hospitalizations, and transmission rate have been rapidly increasing for the last three weeks. Average case counts are more than 1,300 new cases per day, the weekly positivity rate is 31.7%, statewide COVID positive hospitalizations are

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Section 11

greater than 1500, and the transmission rate is 1.51.

Consistently testing at 4-5% of population

Jurisdictions must be able to test 4-5% of their population over the course of a month to ensure that all symptomatic individuals have access to testing, and that the number of new cases is representative of the disease spread within the community and not a result of diminished testing capacity. The City of New Orleans continues to have high rates of testing through healthcare providers and community-based testing locations. The number of tests completed will be monitored by the New Orleans Health Department to ensure that testing remains at this capacity of at least 15,000 per month. Across New Orleans, there have been over 1,000 tests per day since July 2020.

Adequate staffing for contact tracing

In order to isolate and identify exposure of close contacts, the Louisiana Department of Health will need to continue their ability to implement contact tracing. The New Orleans Health Department will work with LDH to determine the levels of contact tracing necessary and provide assistance if necessary.

Adequate healthcare system capacity

Healthcare systems, especially hospitals, must be able to care for all COVID-19 and non-COVID-19 patients without using surge capacity. The New Orleans Health Department utilizes data from regional hospitals and LDH to monitor hospitalization rates and availability of hospital beds, intensive care unit (ICU) beds, ventilators, and personal protective equipment supplies.

The CDC considers an individual to be fully vaccinated when at least two weeks have passed since receiving the last dose of a complete vaccine series. As of January 7, 2022, the City of New Orleans has fully vaccinated more than 81% of all adults with the COVID-19 vaccine. However, only 65% of all New Orleanians have been fully vaccinated, and just 35.1% of the 5 to 17 year old population has been fully vaccinated. Furthermore, there are several census tracts in the City with vaccination rates below 50%. Additionally, the highly contagious Omicron variant of the coronavirus has resulted in large increases in cases and hospitalizations in a short period of time. Therefore, the New Orleans Health Department is placing further restrictions on certain activities pursuant to the Mayor's emergency powers provided by La. R.S. 29:727(F) and the "Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19" filed on May 15, 2020. These restrictions will be effective as of January 12, 2022 at 6:00 A.M.

IV. MANDATES FOR RESIDENTS, INSTITUTIONS, AND BUSINESSES IN THE CITY OF NEW ORLEANS

General Directives to All Individuals and Businesses

Pursuant to the May 15, 2020, Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19, the New Orleans Health Department provides the following general directives to all individuals, institutions, and businesses to best mitigate the further spread of COVID-19 in New Orleans. The CDC advises the best way to prevent the spread

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Section 11

of the illness is to avoid being exposed to the virus, so individuals and businesses should follow these directives to the maximum extent feasible, effective January 12, 2022. If there exists a conflict within these guidelines between general directives/requirements and specific directives/requirements applicable to specific facilities or activities, the specific directives or requirements shall apply.

- All residents and visitors to the City of New Orleans should take personal responsibility to prevent the further spread of COVID-19, including but not limited to, remaining in their homes whenever possible and avoiding gatherings;
- Individuals who are considered high risk for complications due to COVID-19, such as the elderly and people with pre-existing health conditions should remain at home unless accessing essential services;
- As specified in Federal and State guidelines, individuals are required to wear face coverings while passengers and operators of public conveyances, including airplanes, ships, ferries, trains, buses, taxis, ride-shares, and the corresponding transportation hubs.
- All individuals over the age of 2 and without breathing complications (i.e. use of oxygen) are subject to an indoor mask requirement and are required to wear a face covering over the nose and mouth:
 - At all times when in indoor spaces outside the household, unless actively eating or drinking; and
 - While riding in a vehicle with members outside of the household.
- Businesses must comply with all safety requirements as set forth herein;
- Nothing in these guidelines shall prevent private businesses from requiring masks or social distancing to conduct operations;
- Movement around the City should be limited so as to minimize interaction with large groups; and
- Live entertainment is only allowed following the rules set forth on pages 9-13, in addition to the specific directives below, when applicable.

Specific Directives: Entry to Certain Indoor Establishments

In accordance with CDC guidance that vaccination is an effective tool to mitigate the spread of COVID-19 among the general public, including vaccine recipients and those they come into contact with, restrictions will remain in place on premises that feature or routinely allow for higher-risk interactions among patrons and staff. On the premises of these establishments, it is critical that vaccination or testing requirements be implemented in order to provide protection for the individual and those around them (including children who cannot be vaccinated), protecting public health while still preserving essential work and commerce. Therefore, proof of vaccination or frequent testing with negative test results shall be required prior to entry into certain indoor establishments, as provided below.

Prior to entering the following indoor establishments, all individuals who are 5 years of age or older

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Section 11

must provide evidence to designated staff or leaders of:

- 1) having received at least one dose of a COVID-19 vaccine that has received full approval or emergency use authorization from the U.S. Food and Drug Administration or the World Health Organization; or
- 2) having received at least one dose of a COVID-19 vaccine as part of a clinical trial; or
- 3) evidence of a negative antigen or PCR COVID-19 test taken no more than 72 hours before entry, with the individual's name, date of test, and result clearly visible on an official report.

Establishments Subject to this Requirement:

Indoor dining and drinking:

- Restaurants
- Bars
- Breweries, Microbreweries, Distilleries and Microdistilleries

Indoor fitness:

- Gyms
- Indoor group fitness centers or individual fitness classes

Indoor entertainment and/or performances:

- Indoor sports complexes/stadiums/arenas
- Concert and music halls
- Event spaces (hotel ballroom, event venue, reception halls)
- Pool halls, bowling alleys, indoor play centers, arcades, skating rinks, indoor playgrounds and arcades
- Adult live performance venues
- Casinos, racetracks, and video poker establishments
- Indoor amusement facilities

Acceptable evidence of a COVID-19 vaccination includes:

- 1) LA Wallet App's SMART Health Card,
- 2) An original, digital photograph, or photocopy of CDC Vaccination Card (both sides)
- 3) An official vaccine record issued by another state, a foreign nation, or the World Health Organization.
- 4) An official vaccine record issued through a vaccine clinical trial

Staff and employees of establishments listed above who are unvaccinated may provide evidence of a negative COVID-19 test taken at least every 7 days for entry to the workplace.

Nothing in these guidelines should be interpreted to restrict businesses that are not included in the above list from issuing vaccination and testing requirements for their staff and patrons.

Specific Directives: Gathering Size, Mandatory Closures

Pursuant to the May 15, 2020, Mayoral Proclamation to Further promulgate Emergency Orders

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Section 11

During the State of Emergency Due to COVID-19, the New Orleans Health Department provides the following specific directives and guidance to best mitigate the further spread of COVID-19 in New Orleans, effective January 12, 2022.

As defined by the Centers for Disease Control and Prevention ("CDC") and adopted by the City of New Orleans, a gathering refers to a planned or spontaneous event, indoors or outdoors, with a small number of people participating or a large number of people in attendance such as a community event or gathering, concert, festival, conference, wedding, or sporting event. The City of New Orleans further considers gatherings to include any time when members of different households congregate for any reason not otherwise set forth in these guidelines.

a) Indoor Events

- o Individuals attending indoor events are required to wear masks through the duration of event (except while actively eating or drinking).
- o All individuals attending indoor gatherings in the types of establishments listed in the previous section are subject to the requirement to show proof of their COVID-19 vaccination or a negative test result as outlined in that section, regardless of the size of the indoor gathering.

b) Outdoor Events of More Than 500 Individuals

- o Individuals attending outdoor events of more than 500 individuals at which total event attendance is 50% or less of the outdoor venue's full capacity are strongly recommended to wear masks through the duration of event (except while actively eating or drinking).
- o Individuals attending outdoor events of more than 500 individuals at which total attendance is greater than 50% of the outdoor venue's full capacity must wear masks through the duration of the event (except while actively eating or drinking) and must provide proof of full vaccination status OR a negative COVID PCR test result from a test conducted within 72 hours of the time the event begins.
- o An outdoor event is defined as an event occurring at a venue that has an enclosed outdoor space with clear entry and exit points.

Mandatory Safety Requirements for all Businesses and Institutions Allowed to Operate

All businesses and institutions allowed to operate effective January 12, 2022, must implement and comply with the following Mandatory Safety Requirements in order to limit interactions among individuals and limit virus transmission:

- All essential and exempt businesses should take measures to prevent gatherings of employees, customers, visitors, and any other individuals while operating, to the maximum extent feasible. Loitering outside of any essential service providers or open businesses shall be prohibited;
- When working inside, doors and windows should be opened to promote air flow to the greatest extent possible and the number of people occupying a single indoor space should be limited to the smallest number feasible;

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Section 11

When two or more people are occupying a vehicle for work related purposes, they must wear face coverings;

- All workers must have easy and frequent access to soap and water or hand sanitizer during the duration of work, and frequent handwashing or hand sanitizing is required, including before entering and leaving job sites;
- All common spaces and equipment, including bathrooms, frequently touched surfaces and doors, tools, equipment, and vehicles must be cleaned and disinfected routinely throughout the work day;
- A translucent shield or "sneeze guard" should be provided for retail cashiers, when applicable (the presence of this shield does not replace the need to wear a face covering);
- Congregation of workers is discouraged;
- If the nature of an employee's work or the work area does not allow employees to safely consume meals in the workspace, an employer may designate a common area or room where meals may be safely consumed, provided the following conditions are met
 - Occupancy shall be limited to the smallest number feasible
 - Hand washing facilities and/or hand sanitizer shall be immediately available at the entrances of a designated common area or room;
 - There shall be cleaning of the area at regular intervals throughout the day;
- At the entrances of a designated common area or room the employer shall clearly post the policy limiting the occupancy of the space, and the minimum hand washing/hand sanitizing, spacing and cleaning requirements;
- To the extent feasible, employers should be considerate of employees with pre-existing morbidities or health conditions;
- All workers should observe strict social distancing of at least six feet while on the job, unless they are fully vaccinated.

Employee Isolation and Quarantine Recommendations

- Workers should not report to, or be allowed to remain at, a work or job site if sick or symptomatic (with fever higher than 100.4°F/38.0°C, cough, and/or shortness of breath, diarrhea, or any other symptom suggestive of COVID-19);
- Employees who test positive for COVID-19 who are non-symptomatic or mildly symptomatic should not be allowed on site for at least five days after testing positive, regardless of their vaccination status. If on day 5 the worker is still non-symptomatic or mildly symptomatic and a repeat test performed on day 5 is negative, they may be allowed to return to work. If the repeat test on day 5 is positive, the employee should remain in isolation and test every two days until a negative test result is obtained. When the employee tests negative, they may be allowed return to work.
- When diagnostic testing is in short supply, these individuals may be allowed to return to work after day 5 without a test if asymptomatic they continue to wear high-quality masks (surgical, KN95 or N95) for 5 days after return.
- Employees who test positive for COVID-19 who are moderately or severely symptomatic with fever should not be allowed on site for at least seven days, regardless of vaccination status. The employee should isolate until s/he has no fever for at least 24 hours without the use of fever-reducing medicine and other symptoms have improved, and a repeat test on day 7 is negative. If a repeat test on day 7 is negative, they may be allowed to return to work but should wear high-quality masks (surgical, KN95 or N95) around others for at least 5 days thereafter.

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Section 11

When diagnostic testing is in short supply, these individuals may be allowed to return to work after day 10 without a test if asymptomatic.

- Any employee who has contact with a worker or any other person who is diagnosed with COVID-19 should follow CDC's quarantine guidelines based on the exposed employee's vaccination status: <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html>

Additional Requirements for Individuals, Certain Businesses, and Institutions

CHILDCARE, EARLY LEARNING CENTERS, K-12 SCHOOL AND SUMMER PROGRAMS

Childcare, Early Learning Centers, K-12 School and Summer Programs shall be allowed to open according to restrictions put forth by the local governing school system, Louisiana Department of Health, Louisiana Department of Education, and other state agencies.

ADULT DAY CARES AND PACE PROGRAMS

Adult Day Cares and PACE programs shall be allowed to open according to restrictions put forth by the Louisiana Department of Health.

INDOOR AND OUTDOOR RECREATION SPACES AND SPORTS COMPLEXES

Indoor and Outdoor Recreation Spaces and Sports Complexes shall be allowed to open according to the gathering size guidelines above.

- Youth and recreational sports must follow the general and sport-specific guidelines put forth by the LHSAA. Collegiate sports must adhere to both City and conference general and sport-specific guidelines.

RESTAURANTS, BARS, BREWERIES, MICROBREWERIES, DISTILLERIES, AND MICRODISTILLERIES

Pursuant to the May 15, 2020, Mayoral Proclamation to Further Promulgate Emergency Orders During the State of Emergency Due to COVID-19, the Department of Safety and Permits, in conjunction with the New Orleans Health Department, provides the following additional temporary options for outdoor seating to Restaurants, Bars, Breweries, Microbreweries, Distilleries and Microdistilleries, effective January 12, 2022:

All Restaurants, Bars, Breweries, Microbreweries, Distilleries and Microdistilleries may provide indoor and outdoor seating to customers only if they operate in accordance with the guidelines from the State Fire Marshal.

Restaurants, Bars, Breweries, Microbreweries, Distilleries and Microdistilleries that would like to apply for a sidewalk café permit, or whose sidewalk café permit requires renewal, may apply for a temporary sidewalk use permit without fees. The same is true for businesses seeking to apply for parklet permits. The added value brought to citizens and public health by expanding the availability of outdoor restaurant seating outweighs the fees associated with these applications during the COVID-19 emergency. These temporary sidewalk café permits and parklet permits will be

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Section 11

evaluated under the current sidewalk café regulations and parklet standards, as well as compliance with the guidelines from the State Fire Marshal. All such permits will expire on **March 31, 2022**, or the expiration date listed on the face of the permit, whichever is later, unless the City determines that an extension of this date is warranted.

Enforcement of the off-street parking provisions contained in the CZO applicable to Restaurants, Bars, Breweries, Microbreweries, Distilleries and Microdistilleries is hereby temporarily suspended. Restaurants, Bars, Breweries, Microbreweries, Distilleries and Microdistilleries with off-street parking may use those spaces for outdoor seating, provided they operate in accordance with the guidelines from the State Fire Marshal, the safety measures herein, and all other applicable law. Tables shall be arranged in a way to ensure ADA compliance and shall be located no closer than 8' from the center of any required walking path. Loitering in or near the outdoor seating areas of any of these establishments shall be prohibited. In no way shall this temporary privilege be construed as a permanent right.

Sidewalk cafes, parklets, and seating in parking lots shall be considered part of the premises for purposes of this section.

Live Entertainment Guidance (effective January 12, 2022)

Live entertainment for the purposes of the COVID-19 reopening guidelines is defined as: Any one (1) or more of any of the following live performances, performed live by one (1) or more persons, whether or not done for compensation and whether or not admission is charged: musical act, theatrical play or act, including stand-up comedy, magic, dance performances, dance clubs, and disc jockey performances using vinyl records, compact discs, computers, or digital music players when the disc jockey is in verbal communication with the clientele of the establishment. This does not include adult live performances. These guidelines have been created based on the most current recommendations from scientific research institutions.

Indoor Live Entertainment

Indoor Live Entertainment in front of an audience may be performed in restaurants, bars, concert halls, music halls, live performance venues, and event venues following the capacity limits listed above based on the business type. All venues must follow all occupancy capacities and other guidelines as listed for the business type. All venues must obtain a Special Event permit or a Certificate of Registration to allow live entertainment.

- Venues are encouraged to provide at least one of the following mitigation measures if singing and/or wind-blown instruments are included in the performance:
 - HVAC system(s) that provides a minimum of 6 air changes per hour (ACH) within the space occupied by the audience and performers. Guidance on calculating this rate can be found at opensafely.la.gov.
 - Direct air flow towards the performers/stage and away from the attendees at a minimum rate of 2,000 Cubic Feet per Minute (CFM). Guidance on calculating this rate can be found at opensafely.la.gov.
 - An independent HVAC system, dedicated exclusively for the performance area that provides a minimum of 6 air changes per hour (ACH).

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Section 11

o Use of a physical barrier, like Plexiglass, in front of sources of high-velocity air, including singers and wind-blown instruments.

o Singers are required to wear well fitted masks during indoor performances, which allow for proper vowel formation while keeping the mouth and nose covered, throughout the entire performance.

- A minimum of 10 feet of separation should be provided between the performers and attendees. The performance area should not be above the attendees (e.g. indoor balconies), but an elevated stage with the required 10-foot separation is permitted.
- All patrons must be seated and are required to wear masks indoors unless actively eating and drinking.
- Seating should not be allowed within 3 ft of aisles or above entrances, exits or performers.
- If a performer tests positive for COVID-19 or is exposed to someone who is diagnosed with COVID-19, they should follow the Employee Isolation and Quarantine Recommendations included in the above section titled Mandatory Safety Requirements for all Businesses and Institutions Allowed to Operate
- All conductors are required to wear facemasks while indoors. Performers that play wind-blown instruments should wear a face mask while indoors with an opening to fit the mouthpiece of the instrument.
- Live music events are permitted only by performers who are contracted or hired by the business. Singing and performances by patrons (karaoke or open mic) is not permitted.
- All wind-blown instruments must have a bell cover or be in an instrument bag.
- Spit valves are prohibited from being emptied onto the floor, and performers should use a PuppyPad or similar device to empty spit valves.
- Performers must not share music stands, sheet music, instruments, or microphones, and items such as stands and microphones should be sanitized after each performance.
- Signage must be posted indicating that singing and instrumental music produced by wind instruments are thought to be higher risk activities for COVID-19 spread. Older adults and people with certain medical conditions are at increased risk to become severely ill from COVID-19. It is especially important for people at increased risk of severe illness from COVID-19, and those who live with them, to protect themselves from getting COVID-19.

Outdoor Live Entertainment

Outdoor Live Entertainment in front of an audience shall be allowed provided that all requirements set forth in these guidelines are adhered to, including the gathering size limitations. All events or venues must obtain a Special Event Permit.

- All patrons must be seated and should wear face coverings over the nose and mouth unless actively eating and drinking unless fully vaccinated.
- Performers must follow the Employee Isolation and Quarantine Recommendations
- Performers that play wind-blown instruments should wear a face mask with an opening to fit the mouthpiece of the instrument unless fully vaccinated.
- All wind-blown instruments must have a bell cover or be in an instrument bag.
- There must be a 2-foot aisle between audience and performers.
- All singers and speakers should use amplification if necessary to avoid projecting their voices to increase their volume.

G

Section 11

Spit valves are prohibited from being emptied onto the floor, and performers should use a PuppyPad or similar device to empty spit valves.

Special Event Permits for Live Entertainment

Any party seeking to host a live entertainment performance during this phase shall be required to obtain a **special event permit** from the City in order to do so. A special event permit may allow live entertainment when it is otherwise not permitted. Pursuant to her Emergency Proclamation, the Mayor has waived prohibitions in the CZO and in the municipal code limiting the number of special event permits a venue may be eligible for as well as prohibitions regarding the frequency of permitted special events.

Live Entertainment Permitting Guidelines:

- Applications to permit live entertainment may be submitted online or by email to specialevents@nola.gov.
- Special event permit applications submitted less than seven (7) days in advance of the event seeking permitting or registration may be summarily denied.
- Special event permits which include live entertainment as part of the event shall apply subject to the guidelines set forth by the Governor, State Fire Marshal, and Mayor.
- Pursuant to her Emergency Proclamation, the Mayor has waived prohibitions in the CZO against outdoor live entertainment for establishments meeting all of the requirements contained in this document and which obtain a special event permit.
- Hosting live entertainment without obtaining a proper permit, or in violation of the terms of the permit and documentation submitted therewith shall be considered to be a violation of these guidelines and may subject the hosting venue to enforcement activity, including but not limited to revocation of the permit, revocation of a business's ability to open under these guidelines, misdemeanor charges for owners, managers, and/or staff, and cessation of electrical service to the business. Businesses holding Alcoholic Beverage Outlet permits from the City are also advised that the right to maintain such permits is contingent on the business following all applicable laws, including those contained in any Mayoral Proclamation and in these guidelines or any subsequently issued by the City.
- Live entertainment permits shall be initially granted for a ten-day period. The application must list all proposed events during said ten-day period. After the conclusion of this ten-day period, applicants may apply to extend their permit for up to a six-month period. All proposed events must also be detailed in that application as directed by Safety and Permits.

STREET PERFORMERS AND BUSKERS

- Street Performers and Buskers shall be allowed to perform on public rights-of-way.
- Street Performers and Buskers are encouraged to maintain small audiences.
- If a performer tests positive for COVID-19 or is exposed to someone who is diagnosed with COVID-19, they should follow the Employee Isolation and Quarantine Recommendations included in the above section titled Mandatory Safety Requirements for all Businesses and Institutions Allowed to Operate
- Performers that play wind-blown instruments are required to wear a face mask indoors with an opening to fit the mouthpiece of the instrument.
- All wind-blown instruments must have a bell cover or be in an instrument bag.

G

Section 11

All singers and speakers should use amplification if necessary to avoid projecting their voices to increase their volume.

FRONT PORCH CONCERTS

Live entertainment at private residences in front of an audience may take place in accordance with the following rules. The City will deem the following events to be eligible for Porch Concert Permits and waive fees for these permits which meet the following criteria. **If any of these criteria are not met, a special event permit is required:**

- The applicant seeks to hold the event at their private residence. Proof may be required in the form of an act of sale or lease if DSP determines it is necessary.
- Amplification is allowed as long as (1) the concert does not violate the City's noise ordinance and (2) there is no modification of existing electrical systems on the premises.
- The event will not include any of the following:
 - Stages or other platform or structural construction
 - Tents
 - The sale of alcohol
 - Entry fees of any kind.
 - The event will include no more than 25 individuals.
- The following rules must be followed at all Front Porch Concerts:
 - All audience members should be seated and should wear face coverings over the nose and mouth unless actively eating or drinking.
 - If a performer tests positive for COVID-19 or is exposed to someone who is diagnosed with COVID-19, they should follow the Isolation and Quarantine Recommendations included in the above section titled Mandatory Safety Requirements for all Businesses and Institutions Allowed to Operate
 - Performers that play wind-blown instruments should wear a face mask with an opening to fit the mouthpiece of the instrument unless fully vaccinated.
 - All wind-blown instruments must have a bell cover or be in an instrument bag.
 - All singers and speakers should use amplification if necessary to avoid projecting their voices to increase their volume.
 - Spit valves are prohibited from being emptied onto the floor, and performers should use a PuppyPad or similar device to empty spit valves.

Special Event Guidance

Any party seeking to host a special event in the City during the current phase shall be required to obtain a special event permit from the City in order to do so. Pursuant to her Emergency Proclamation, the Mayor has waived prohibitions in the CZO and in the municipal code limiting the number of special event permits a venue may be eligible for as well as prohibitions regarding the frequency of permitted special events. For the purposes of these reopening guidelines, "special events" are defined as any event that is not allowed by right by an establishment's zoning designation under the CZO (or by an approved conditional use) and by these guidelines.

SPECIAL EVENT GUIDELINES:

Special events must adhere to the following rules:

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Section 11

Anyone hosting a special event must prohibit individuals from entering the event if they have symptoms of illness, shall require that all participants and attendees wear face coverings indoors, should, to the extent feasible, have unused face coverings in stock to provide to participants and attendees who do not have face coverings upon entry, and must post signage at all entrances to the event clearly indicating such requirements and prohibitions.

- Participants and attendees must have easy and frequent access to soap and water or hand sanitizer during the duration of the event, including any set-up or dismantling of the event space, and frequent hand washing or hand sanitizing is required including before entering and after leaving the event.
- All common spaces and equipment, including bathrooms or port-o-lets and frequently touched surfaces and doors, tools, and equipment must be cleaned and disinfected before, during, and after the event.
- Everyone attending the event, including those who may be working or volunteering at the event, shall be considered to be a "participant or attendee" as the term is used herein.
- All attendees at special events should have socially-distant seating. Applicants are expected to provide plans regarding how they will ensure that these activities do not occur.
- Applications to permit special events may be submitted online or by email to specialevents@nola.gov.
- Special event permit applications submitted less than seven (7) days in advance of the event seeking permitting may be summarily denied.
- Applications to permit special events shall be required to submit the following information, as well as any other information requested by the Department of Safety and Permits:
 - A site plan showing the area where the event will take place, including any stage or performance areas, all tables and chairs, restrooms, and any other relevant physical features. The site plan must conform to social distancing requirements.
 - A detailed organizational plan for the event which specifies the following:
 - A listing of any food or beverages to be sold, including whether alcoholic beverages will be sold;
 - Any ticketing or attendance fees;
 - A planned schedule of the event;
 - Any other information requested by the Department of Safety and Permits.
 - A list of safety measures to be taken to ensure that the event can proceed without endangering the public health, including but not limited to:
 - Sanitizing stations;
 - Ability to collect names and contact information of all participants for contact tracing purposes, as well as policies to retain this information for at least 21 days;
 - Policies to prevent congregation;
 - Policies to encourage mask wearing;
 - Policies to prevent symptomatic participants or attendees from joining the event;
 - Policies to enforce maximum occupancy; and
 - Noise mitigation policies.
- Special event permits are a privilege, not a right, and the City retains the ability to grant or deny any application for any reason.
- Hosting live entertainment without obtaining a proper permit, or in violation of the terms of

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Section 11

the permit and documentation submitted therewith shall be considered to be a violation of these guidelines and may subject the hosting venue to enforcement activity, including but not limited to revocation of the permit, revocation of a business's ability to open under these guidelines, misdemeanor charges for owners, managers, and/or staff, and cessation of electrical service to the business. Businesses holding Alcoholic Beverage Outlet permits from the City are also advised that the right to maintain such permits is contingent on the business following all applicable laws, including those contained in any Mayoral Proclamation and in these guidelines or any subsequently issued by the City

- Special event permits may be initially granted for a ten-day period. The application must list all proposed events during said ten-day period. After the conclusion of this ten-day period, applicants may apply to extend their permit for up to a six-month period. All proposed events must also be detailed in that application as directed by Safety and Permits.

Based on public health data and emerging evidence of the SARS-CoV-2 virus and COVID-19 disease, the Director of Health may amend, update, revise, or clarify any portion of this document including public health milestones, definitions of phases, eligible businesses, or any other provision, in order to institute updated measures for the control of the epidemic and to protect the health and safety of the public. Exemptions may be revoked based on failure to comply with requirements set forth in this document, or due to other public health data that indicate such a setting or activity is not aligned with minimizing exposure to the virus.

V. ENFORCEMENT OF THESE GUIDELINES

The Louisiana Homeland Security and Emergency Assistance and Disaster Act provides that "any person . . . violating any order, rule, or regulation promulgated pursuant to this Chapter, shall be fined not more than five hundred dollars, or confined in the parish jail for not more than six months, or both." La. R.S. 29:727(G). Additionally, Section 54-501 of the City Code provides that whoever "violates any provision of an emergency order issued by a competent official under authority of a declaration of emergency made pursuant to state law, or whoever during such a declared state of emergency sells anything at a price that violates R.S. 29:732, shall be guilty of a misdemeanor." Section 54-25 of the City Code says that such a misdemeanor "shall be punished by a fine not exceeding \$500.00, or by imprisonment for not more than five months or both such fine and penalty" Mayor Cantrell has declared a state of emergency to exist in New Orleans via proclamation on March 11, 2020, and has imposed orders subject to these penalty provisions in her May 15, 2020, Proclamation. These emergency orders will be strictly enforced, and compliance is of the utmost importance.

Enforcement measures may include, but are not limited to, prohibiting a business from offering take-out services, revocation of a business's ability to open under these guidelines, revocation of any special event or live entertainment permits, revocation of certificates of registration, misdemeanor charges for owners, managers, and/or staff, and cessation of electrical service to the business. Businesses holding Alcoholic Beverage Outlet permits from the City are also advised that the right to maintain such permits is contingent on the business following all applicable laws, including those contained in any Mayoral Proclamation and in these guidelines or any subsequently issued by the City.

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Section 11

private citizens and businesses into public service in violation of Article I, § 2 of the Louisiana Constitution;
CIVIL DISTRICT COURT

CONSIDERING THE ABOVE AND FOREGOING, verified Petition:


IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the vaccinate-or-test requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 Mayor's Vaccine Mandate;

IT IS ORDERED that a **TEMPORARY RESTRAINING ORDER** be and is hereby issued to Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D., restraining Defendants, their officers, agents, employees, and all persons in active concert or participation from enforcing the mask requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022.

IT IS FURTHER ORDERED that this Temporary Restraining Order shall expire at the end of ten (10) days from the date and time stated below, unless otherwise terminated or extended by this Court for good cause;

IT IS FURTHER ORDERED that Defendants, LaTOYA CANTRELL, NEW ORLEANS HEALTH DEPARTMENT, and JENNIFER AVENGO, M.D, appear and show cause on the 14th day of February, 2022 at 9:00 o'clock a.m./p.m. VIA ZOOM why preliminary injunctive relief should not be granted enjoining the vaccinate-or-test requirement and the mask requirement requirements under the City of New Orleans Health Department Guidelines for COVID-19 Reopening January 12, 2022 pending a trial on permanent injunctive relief.

THUS DONE AND SIGNED in New Orleans, Louisiana this 2nd day of February, 2022 at 2:00 o'clock p.m.


HONORABLE JUDGE, CIVIL DISTRICT COURT

PLEASE RUSH SERVICE TO:
LaToya Cantrell, New Orleans Health Department, and
Jennifer Avegno, M.D
Through the New Orleans City Attorney
Donnie D. Turner
1300 Perdido Street, Suite 5E03
New Orleans, Louisiana 70112

Rachael D. Johnson
Judge - Division "B"


VERIFIED
2/2/22

VERIFIED
C. FAVAROTH