

FILED

AUG 27 2021

KITSAP COUNTY CLERK
ALISON H. SONNTAG

**KITSAP COUNTY SUPERIOR COURT
KITSAP COUNTY DISTRICT COURT
STATE OF WASHINGTON**

IN RE THE KITSAP COUNTY COURTHOUSE AND THE
PANDEMIC OUTBREAK OF THE CORONAVIRUS
DISEASE 2019 (COVID-19)

No. 2021-11

EMERGENCY ADMINISTRATIVE ORDER

THIS ADMINISTRATIVE ORDER is being issued in response to the current pandemic outbreak of the Coronavirus Disease 2019 (COVID-19).¹

The Washington State Supreme Court, Kitsap County Superior Court and Kitsap County District Court have issued multiple Emergency Orders in response to the coronavirus pandemic.² Through emergency orders, the Washington State Supreme Court has specifically delegated to local courts the authority to adopt measures necessary to protect the health and safety of their communities, and has directed courts to follow the most protective public health guidance applicable in their jurisdiction.

On August 12, 2021, the Kitsap County Health District issued a Directive³ mandating all persons in public buildings to wear masks, regardless of vaccination status. The Kitsap County Superior and District Courts issued Emergency Administrative Order 2021-10 in conformity with the Kitsap Health District's Directive.

On August 23, 2021, the U.S. Food and Drug Administration (FDA) approved the first COVID-19 vaccine. The Pfizer-BioNTech, marketed as Corminaty, is approved for the prevention of COVID-19 disease in individuals sixteen (16) years of age and over. This vaccine also continues to be available under Emergency Use Authorization (EUA), including for individuals twelve (12) to fifteen (15) years of age. The Moderna and Janssen COVID-19 vaccines continue to be available under EUA for the prevention of COVID-19 disease in individuals eighteen (18) years of age or older.

On August 18, 2021, the Washington State Supreme Court issued Emergency Order 25700-B-669, which mandates that all Supreme Court employees shall be fully vaccinated by November 1, 2021. The Order reads:

“WHEREAS, on February 29, 2020, Governor Inslee proclaimed a state of emergency due to

¹ Hereafter, COVID-19.

² See Washington State Supreme Court Emergency Orders 25700-B-602 through 25700-B-669, Kitsap County Superior Court Emergency Orders 2020-1 through 2021-10, and Kitsap County District Court Emergency Orders 2020-1 through 2021-10, all incorporated by reference herein.

³ Attached and incorporated by reference herein.

the novel coronavirus disease (COVID-19) outbreak in Washington; and on March 13, 2020, President Trump declared a national emergency due to the COVID-19 outbreak across the United States; and on February 24, 2021 President Biden continued the national emergency; and

WHEREAS, many court facilities in Washington are ill-equipped to effectively comply with social distancing and other public health requirements and therefore continued in-person court appearances jeopardize the health and safety of litigants, attorneys, judges, court staff, and members of the public. Yet, court operations are recognized as essential, and may often be conducted by alternative means, in alternative settings, and with extra measures taken for public safety; and

WHEREAS, pursuant to this Court's prior orders, many Washington courts have taken important steps to protect public health while ensuring continued access to justice and essential court services, including by strictly observing social distancing measures, holding proceedings remotely, suspending many in-building operations, and promulgating emergency rules and orders as necessary; and

WHEREAS, the coordinated response from Washington courts to prevent the further spread of COVID-19 must be continued beyond the timeframes in this Court's prior orders while allowing courts to operate effectively and maintain effective and equitable access to justice; and

WHEREAS, after months of improving COVID-19 epidemiological conditions in Washington State, the emergence of highly contagious COVID-19 variants, including the "delta variant" that is at least twice as transmissible as the virus that emerged in late 2019, coupled with the continued significant numbers of unvaccinated people, have caused COVID-19 cases and hospitalizations to rise sharply among unvaccinated populations and have resulted in breakthrough infections in some fully vaccinated individuals; and

WHEREAS, COVID-19 vaccines are effective in reducing infection and serious disease, widespread vaccination is the primary means we have as a state to protect everyone, including persons who cannot be vaccinated for medical reasons, youth who are not eligible to receive a vaccine, immunocompromised individuals, and vulnerable persons from COVID-19 infections; and

WHEREAS, widespread vaccination is also the primary means we have as a state to protect our health care system, to avoid the return of stringent public health measures, and to put the pandemic behind us; and

WHEREAS, COVID-19 vaccinations have been available in Washington State from December 2020 to the present, and since April 15, 2021, all Washingtonians over the age of 16 have been eligible to receive free COVID-19 vaccinations from a wide variety of providers at many locations; and

WHEREAS, on July 6, 2021, the Office of Legal Counsel of the United States Department of Justice issued a legal opinion stating that federal and state governments were not prohibited by federal law from imposing vaccination mandates, even when the only vaccines available are those authorized under U.S. Food and Drug Administration Emergency Use Authorizations; and

WHEREAS, it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures; and

WHEREAS, court employees live in and provide services to the public in every county in our state, and many interact with the public on a regular basis, and they all interact with some portion of the community at large to varying degrees before and/or after court work hours; and

WHEREAS, all court employees, regardless of their current work setting, need to be prepared to come to their worksite at any time necessary to meet the operational needs of the courts; and

WHEREAS this court has the authority to take actions that are reasonably necessary for the efficient administration of justice and the fulfillment of its constitutional duties; and

WHEREAS, on August 9, 2021 Governor Inslee issued a proclamation requiring all employees, on-site independent contractors, volunteers, goods and services providers, and appointees of designated state agencies to be fully vaccinated against COVID-19 on or before October 18, 2021.

NOW, THEREFORE, pursuant to the Court's authority to administer justice and to ensure the safety of courts, personnel, litigants, and the public, during this public health emergency, it is hereby ORDERED:

1. Prohibitions. This order prohibits any Worker from engaging in work for the Supreme Court after November 1, 2021 if the Worker has not been fully vaccinated against COVID-19. A Worker must either be vaccinated or qualify for an exemption to be eligible for employment at the Supreme Court.

2. Exemptions from Vaccine Requirement.

a) Workers for the Supreme Court are not required to get vaccinated against COVID-19 if they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this order.

b) To the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this order, the Supreme Court must obtain from the individual requesting the accommodation documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates the accommodation and the probable duration of the need for the accommodation.

c) To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, the Supreme Court must document that the request for an accommodation has been made and the document must include a statement regarding the way in which vaccinations conflict with the religious observance, practice, or belief of the Worker.

d) Reasonable accommodations will be determined on an individualized basis and, where an employee is exempt from this mandate, accommodations may include but are not limited to requirements to wear a mask, obtain viral testing regularly, socially distance, or work remotely.

3. Acceptable Proof of Full Vaccination Against COVID-19: Where required above, Workers for the Supreme Court must provide proof of full vaccination against COVID-19. Acceptable proof may include:

- a) CDC COVID-19 Vaccination Record Card or photo of the card;
- b) Documentation of vaccination from a health care provider or electronic health record;
- c) State immunization information system record;
- d) Other forms approved by Human Resources.

Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

4. Definitions.

a) “Worker”: For purposes of this order, “Worker” includes a person engaged to work as an employee, independent contractor, service provider, volunteer, or through any other formal or informal agreement to provide goods or services, whether compensated or uncompensated, but does not include a visitor or patron;

b) “Supreme Court”: For purposes of this order, references to the “Supreme Court” include the Washington State Law Library;

c) Independent contractors and their Workers are exempt from this order unless any provision of the contract to provide goods or services requires work to be performed in person and on site, regardless of frequency, whether other Workers are present, or any contingent nature of that requirement.

ADDITIONALLY, the Washington State Court Administrator is directed to adopt and implement similar vaccination requirements for the Administrative Office of the Courts Workers.

ADDITIONALLY, all other courts, agencies, and entities in the judicial branch, including the Washington State Bar Association, the Office of Public Defense and the Office of Civil Legal Aid, are strongly encouraged to adopt and implement similar vaccination requirements for their Workers as defined above.⁴

This order will take effect immediately and shall remain in effect until further order of the Washington Supreme Court.”

⁴ Emphasis added.

The Kitsap County Superior and District Courts are guided in principle and in law by the Washington Supreme Court. Washington General Rule (GR) 29 imposes a duty on presiding judges to maintain and control working conditions for their employees.

Based upon previous Kitsap Superior and District Courts' Emergency Administrative Orders, the Orders of the Washington State Supreme Court, the Directive(s) issued by the local and state health agencies and the recommendations of the Washington State Department of Labor and Industry and the Centers for Disease Control, is hereby Ordered that effective immediately, and until further Order of the Kitsap County Superior and District Courts:

1. Prohibition. All Superior and District Court employees are prohibited from engaging in work for the Kitsap County Superior and District Courts after November 1, 2021 if the employee has not been fully vaccinated⁵ against COVID-19. All court employees must either be vaccinated or qualify for an exemption to be eligible for employment at the Kitsap County Superior and District Courts. If not fully vaccinated by November 1, 2021, the employee will be considered no longer qualified for their position and will be terminated for non-disciplinary reasons.
2. Exemptions From Vaccine Requirement. Employees of the Courts are not required to get vaccinated against COVID-19 if they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this order.
3. Disability Accommodation. To the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this order, the applicable Court must obtain from the individual requesting the accommodation documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates the accommodation and the probable duration of the need for the accommodation.
4. Religious Accommodation. To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, the applicable Court must document that the request for an accommodation has been made and the document must include a statement regarding the way in which vaccinations conflict with the religious observance, practice, or belief of the employee.
5. Presiding Judge Determination. Reasonable accommodations will be determined on an individualized basis by the Presiding Judge of the applicable Court pursuant to General Rule (GR) 29 and, where an employee is exempt from this mandate, accommodations may include but are not limited to requirements to wear a mask, obtain viral testing regularly, socially distance, or work remotely.

⁵ People are considered "fully vaccinated" 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

6. Acceptable Proof of Full Vaccination Against COVID-19. Where required above, employees of the Courts must provide proof of full vaccination against COVID-19. Acceptable proof may include: a) CDC COVID-19 Vaccination Record Card; b) Documentation of vaccination from a health care provider or electronic health record; c) State immunization information system record; d) Other forms approved by Human Resources. Personal attestation is not an acceptable form of verification of COVID-19 vaccination.
7. “Employee” Definition. For purposes of this Order, “employee” includes a person engaged to work as an employee, independent contractor, or volunteer, but does not include a visitor or patron.
8. Independent Contractor Exemption. This Order applies to all independent contractors and their workers who provide goods and services in person and on site, unless the work performed in person and on site includes only the delivery of goods or the maintenance or repair of the facility and or equipment, regardless of frequency, whether other workers are present, or any contingent nature of the requirement.
9. Mandatory Masking. Masks are required in all public areas of the courthouse (including courtrooms, hallways and bathrooms) regardless of vaccination status.
10. Mandatory Social Distancing. Six-foot social distancing requirements remain in effect in all public areas of the courthouse, including the courtrooms, hallways and bathrooms.
11. Previous Administrative Orders. All previous Emergency Administrative Orders not inconsistent with this Order remain in full effect.⁶

The Kitsap County Courthouse remains open.

DATED this 26th day of August, 2021.

/s/ Signed Electronically

Judge Kevin D. Hull
Presiding Judge, Kitsap County Superior Court

/s/ Signed Electronically

Judge Claire A. Bradley
Presiding Judge, Kitsap County District Court

⁶ Including but not limited to all previously issued orders regarding court appearances via Zoom Video Conferencing.

August 12, 2021

**LOCAL HEALTH OFFICER DIRECTIVE FOR WEARING OF MASKS
IN PUBLIC INDOOR SPACES**

WHEREAS, the novel coronavirus 2019 (SARS-CoV-2) which causes COVID-19 has led to over 10,000 reported cases, 400 hospitalizations, and 126 deaths in Kitsap County since January 2020; and

WHEREAS, Kitsap County remains under an emergency declared by Kitsap County, the Governor, and the Secretary of the United States Department of Health and Human Services; and

WHEREAS, a fifth wave of increasing COVID-19 transmission has been underway since approximately July 10, 2021, leading to a 591% increase in 7-day case rate to 152 per 100,000 residents; and

WHEREAS, this case rate is above the threshold for “high transmission” as defined by the federal Centers for Disease Control and Prevention (CDC); and

WHEREAS, vaccination against COVID-19 in Kitsap County has been underway since December 2020 and just over 52% of the population is now fully vaccinated; and

WHEREAS, approximately 100,000 Kitsap County residents of age ≥ 12 years remain unvaccinated despite widespread availability of vaccine for several months; and

WHEREAS, approximately 38,000 Kitsap County children < 12 years of age remain unvaccinated due to their ineligibility for vaccination currently; and

WHEREAS, severely immunosuppressed individuals in the community have a reduced response to vaccine and remain vulnerable to severe disease; and

WHEREAS, SARS-CoV-2 spreads from person to person primarily through inhalation of air carrying very small droplets and aerosol particles that contain infectious virus; and

WHEREAS, the more transmissible delta strain of SARS-CoV-2 now accounts for virtually all transmission occurring in Kitsap County; and

WHEREAS, the occurrence of severe disease, hospitalization, and death due to COVID-19 are higher among un-vaccinated than among vaccinated persons in Kitsap County during the month of July 2021; and

WHEREAS, fully vaccinated individuals can become infected and account for increasing numbers of Kitsap County cases in July 2021; and

WHEREAS, use of well fitting, multi-layer cloth face coverings or medical procedure masks has been demonstrated to reduce generation of virus-transmitting aerosols from contagious individuals; and

WHEREAS, use of well fitting, multi-layer cloth face coverings or medical procedure masks also has been demonstrated to reduce inhalation of virus-transmitting aerosols by the wearer; and

WHEREAS, the CDC recommends all persons in high transmission communities like Kitsap County wear masks when present in public indoor spaces—regardless of vaccination status; and

WHEREAS, the University of Washington’s Institute for Health Metrics and Evaluation’s most recent COVID-19 Results Briefing for Washington State on August 5, 2021, projected that rapid adoption of universal masking coverage could prevent 1,500 cumulative excess deaths due to COVID-19 between now and December 1, 2021, in Washington state; and

WHEREAS, on July 26, 2021, the Local Health Officer joined other regional counties’ health officers in recommending masking in public indoor spaces; and

WHEREAS, reported cases and hospitalizations continue to increase; and

WHEREAS, Kitsap County’s COVID-19 inpatient census has increased from zero to 26 over the past month and the hospital intensive care unit is operating at $\geq 90\%$ maximum capacity with little additional reserve to absorb a greater surge of COVID-19 hospitalizations; and

WHEREAS, Washington state law, RCW 70.05.070(2), (3), requires and empowers the Local Health Officer to take such action as is necessary to maintain health and to control and prevent the spread of any contagious or infectious diseases within the jurisdiction; and

WHEREAS, state regulation, WAC 246-100-036, requires the Local Health Officer, when necessary, to institute disease control measures as he, she, or they deem necessary based on his, her, or their professional judgment, current standards of practice, and the best available medical and scientific information.

BASED UPON ALL THE ABOVE, THE LOCAL HEALTH OFFICER HEREBY FINDS THAT:

Use of face masks for everyone ≥ 5 years of age within indoor public spaces is reasonable and necessary in Kitsap County to reduce the risk for COVID-19 transmission until the Kitsap Public Health District confirms that the COVID-19 risk to Kitsap County residents is substantially reduced based on considerations that include but may not be limited to: COVID-19 disease rates declining to low levels of community transmission as defined by the Centers for Disease Control

and Prevention (CDC); COVID-19 hospitalizations and death rates stabilizing at low levels; a safe and effective COVID-19 vaccine being authorized by the US Food & Drug Administration (FDA) for use in children 5 years through 11 years.

EFFECTIVE SATURDAY, AUGUST 14, 2021, AT 6:00AM

As the Local Health Officer I hereby direct as follows:

- Everyone ≥ 5 years of age in Kitsap County must wear a face covering within indoor public spaces.
- Children age two, three, or four years old, while exempt from this official directive, are recommended to wear a face covering with the assistance and close supervision of an adult in accordance with the current Order of the Secretary of Health.
- Everyone in correctional facilities, homeless shelters, schools, childcare, public transportation, and health care settings--including doctor's offices, long-term care, and hospitals--must also wear a well-fitted mask in accord with state requirements already in place.

THIS DIRECTIVE APPLIES TO INDOOR SPACES THAT ARE OPEN TO THE PUBLIC, including retail, grocery stores, government buildings, and other businesses and places where members of the public can enter freely;

IT DOES NOT APPLY TO INDOOR NON-PUBLIC SPACES, including businesses, offices, and other places of employment with limited access. Employers should continue to follow current guidance and requirements from the Washington State Department of Labor and Industries on worker safety.

THIS DIRECTIVE ALSO DOES NOT APPLY TO OUTDOOR PLACES. Please follow current Washington State Department of Health guidance and directives on the use of masks outdoors.

Yours in health,



Gib Morrow, MD, MPH
Health Officer