

October 12, 2021

**NOTICE OF JCPH ORDER 21-005 REQUIRING
LOCAL GOVERNMENT WORKERS TO SUBMIT TO ROUTINE TESTING FOR
COVID-19 (JCPHO 21-005)**

Pursuant to Colorado Revised Statutes (“C.R.S”) §§25-1-506 and 508 Jefferson County Public Health (“JCPH”) issues this Jefferson County Public Health Order 21-005 Requiring all Local Government Workers to Submit to Routine Testing for COVID-19.

JCPH is working to stop the spread of Coronavirus 2019 (“COVID-19”). To support this effort, the Jefferson County Board of Health (the “Board”) finds it necessary to implement mitigation measures to require all Local Government Workers to submit a negative COVID-19 test result to their employer no less frequently than once every seven (7) days in order to report to work in person as outlined in this Order. The intent of this Order shall be to control and reduce the spread of COVID-19 to prevent unnecessary deaths and serious illness, to maintain consistent health care capacity in Jefferson County, and to protect those members of the public who must do business at local government offices.

FINDINGS AND NECESSITY OF ORDER

A. Jurisdiction and Authority

JCPH has public health jurisdiction over Jefferson County, Colorado (“Jefferson County”), including all cities and towns therein. In furtherance of its jurisdiction, JCPH has the power and duty to investigate and control the causes of epidemic or communicable diseases and conditions affecting the public health within Jefferson County, as well as the power and duty to close schools and public places and to prohibit gatherings of people when necessary to protect public health, and to establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, to exercise physical control over property and over persons within Jefferson County as JCPH may find necessary for the protection of public health.

B. The COVID-19 Virus and the Delta Variant

COVID-19 was first detected in Wuhan, China in late 2019, and since then has spread to over 213 countries, including the United States.

COVID-19 is a respiratory illness transmitted like other respiratory illness primarily through person-to-person contact via respiratory droplets or aerosols.¹ Persons infected with COVID-19 may become symptomatic anywhere from two (2) to fourteen (14) days after exposure. Symptoms include fever, cough or shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting,

¹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Transmission* (July 12, 2021), available at, <https://www.cdc.gov/coronavirus/2019-ncov/transmission/index.html>

diarrhea, and other symptoms.² Persons infected with COVID-19 may be asymptomatic yet still able to transmit the virus. Individuals with serious chronic health conditions and older adults are most at risk for becoming very ill with this disease but unvaccinated individuals of all ages are at high risk of infection.

The Colorado Department of Public Health and Environment (“CDPHE”) first detected the Delta variant of the SARS-CoV-2 virus in Colorado the week of April 18, 2021. As of September 19, 2021, the Delta variant constituted 100% of all COVID-19 tests sampled for the variant in Colorado.³

Due to the recent surge of Delta variant COVID-19 cases, it is now estimated that more than 80% of the population must be vaccinated to achieve herd immunity due to the high rate of transmissibility of the Delta variant.⁴ The Centers for Disease Control and Prevention (“CDC”) reports that the Delta variant is twice as contagious as previous variants and the greatest risk of transmission is among unvaccinated people who are much more likely to contract, and therefore transmit, the virus.⁵ Some data suggests that the Delta variant may cause more severe illness than previous strains of the virus in unvaccinated persons.⁶ Immunocompromised individuals are at an increased risk of serious, prolonged illness due to COVID-19, even after vaccination.⁷ Moreover, fully vaccinated people with Delta variant breakthrough infections can spread the virus to others, although vaccinated people appear to be infectious for a shorter period of time.⁸

Certain areas of the United States have now exceeded, or are close to exceeding, hospital and ICU capacity in light of the surge of cases. The current 7-day average hospitalization in HHS Region 8, which includes Colorado, for September 28 through October 4, 2021 is 410.⁹ This is a 4.2% increase over the previous 7-day average for the period of September 21 through September 27, 2021, which was 393.¹⁰ In Jefferson County, the 14-day average hospitalization rate for the period

² CENTERS FOR DISEASE CONTROL AND PREVENTION, *Symptoms of COVID-19* (February 22, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

³ COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *Colorado COVID-19 Data*, available at <https://covid19.colorado.gov/data> (last visited September 23, 2021).

⁴ INFECTIOUS DISEASES SOCIETY OF AMERICA, *Media Briefing: Vaccines, the Delta Variant, and Chasing Herd Immunity* (August 3, 2021), available at <https://www.idsociety.org/multimedia/videos/idsa-media-briefing-vaccines-the-delta-variant-and-chasing-herd-immunity/>

⁵ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Delta Variant: What We Know About the Science* (August 26, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>

⁶ *Id.*

⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, *COVID Data Tracker Weekly Review: Easy as 1-2-3* (August 27, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/08272021.html>

⁸ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Delta Variant: What We Know About the Science* (August 26, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>

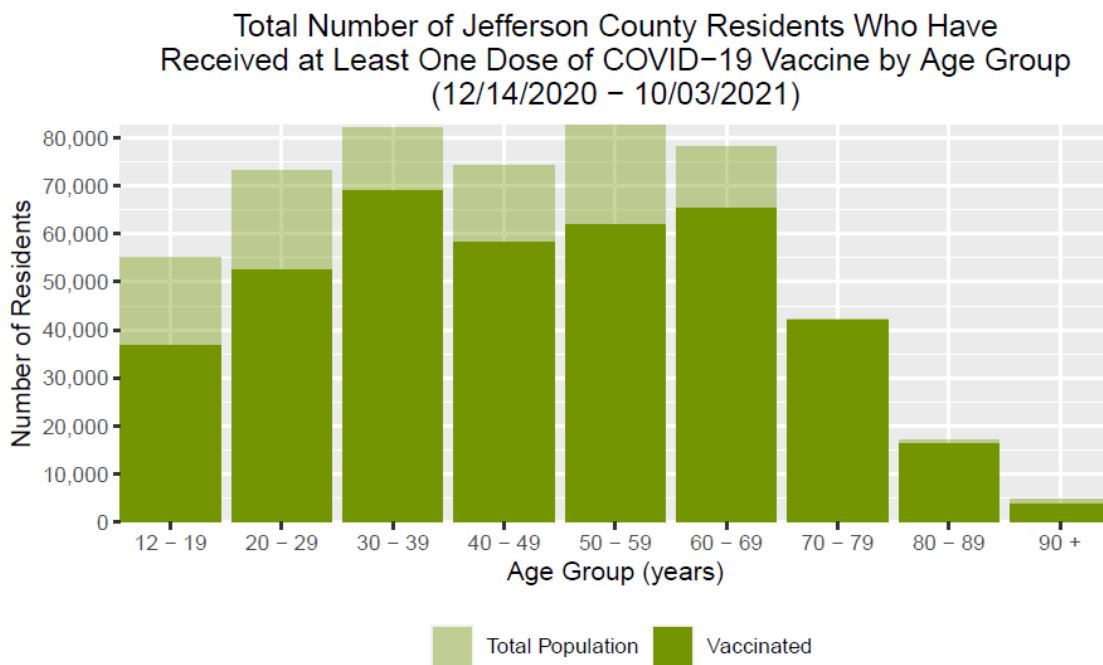
⁹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *COVID Data Tracker: New Admissions of Patients with Confirmed COVID-19 per 100,000 Population by Age Group, HHS Region 8* (Aug 01, 2020 – October 4, 2021), available at <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions> (last visited October 6, 2021)

¹⁰ CENTERS FOR DISEASE CONTROL AND PREVENTION, *COVID Data Tracker: New Admissions of Patients with Confirmed COVID-19 per 100,000 Population by Age Group, HHS Region 8* (Aug 01, 2020 – October 4, 2021), available at <https://covid.cdc.gov/covid-data-tracker/#new-hospital-admissions> (last visited October 5, 2021)

of September 27 through October 4, 2021 is 1.14 per 100,000.¹¹ This is a substantial increase from the period of June 28 through July 12, 2021, when the 14-day average hospitalization rate was .26 per 100,000.¹²

In Colorado, as of Oct 6, 2021, fully vaccinated individuals were 3.3 times less likely to become a COVID case, 8.3 times less likely to be hospitalized for COVID, and 3.6 times less likely to die from COVID than unvaccinated individuals. Additionally, the median age of unvaccinated hospitalizations was 57 compared to the median age of vaccinated hospitalizations which was 73.¹³

While the COVID-19 vaccines are currently available to all Coloradoans aged 12 and older, estimates indicate that as of Sept 29, 2021, only about 70% of the Colorado population is currently immune to COVID-19;¹⁴ this is far short of the percentage of the population needed to reach herd immunity. In Jefferson County, 79.7% of the eligible population and 69.5% of the total population has received at least one (1) vaccine dose as of October 3, 2021.¹⁵



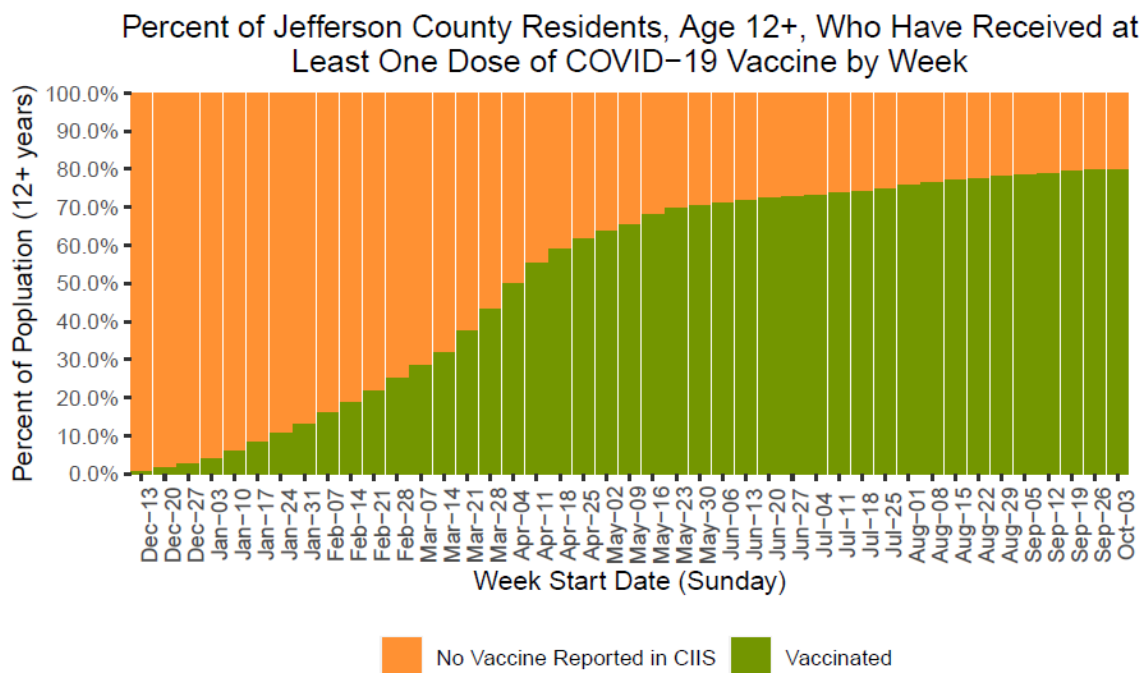
¹¹ JEFFERSON COUNTY PUBLIC HEALTH, *COVID-19 Case Summary* (October 4, 2021), available at, <https://www.jeffco.us/4007/Case-Summary>

¹² JEFFERSON COUNTY PUBLIC HEALTH, *OPR COVID19 Indicators 27* (July 19, 2021).

¹³ COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, <https://covid19.colorado.gov/vaccine-breakthrough>

¹⁴ COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, *LPHA Director's Epi Update* (Sept. 29, 2021).

¹⁵ JEFFERSON COUNTY PUBLIC HEALTH, *Jefferson County COVID-19 Vaccine Report* (October 4, 2021).



According to the CDC, COVID-19 continues to pose a serious risk, especially to individuals who are not fully vaccinated, and certain viral mitigation measures remain necessary to protect against COVID-19 cases, hospitalizations, and deaths. On July 28, 2021, the CDC updated its guidance and recommended that all individuals, including those who are fully vaccinated, wear a Face Covering in all public indoor settings in [areas of substantial or high transmission](#).¹⁶

The CDC created a “transmission tracker” to monitor the transmission of COVID-19 in each county and identifying the transmission status of COVID-19 as “low,” “moderate,” “substantial,” or “high.”¹⁷ As of October 4, 2021, the CDC identifies Jefferson County as an area with high transmission at a 7-day new COVID-19 case rate of 172.93 per 100,000.¹⁸ As of October 4, 2021, there were 680,935 known presumptive positive cases of COVID-19 statewide in Colorado, and 58,954 known presumptive positive cases in Jefferson County, Colorado, as well as 7,946 deaths due to COVID-19 statewide and 934 deaths in Jefferson County.¹⁹

¹⁶ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Interim Public Health Recommendations for Fully Vaccinated People* (Sept 1, 2021) available at, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (last visited September 23, 2021).

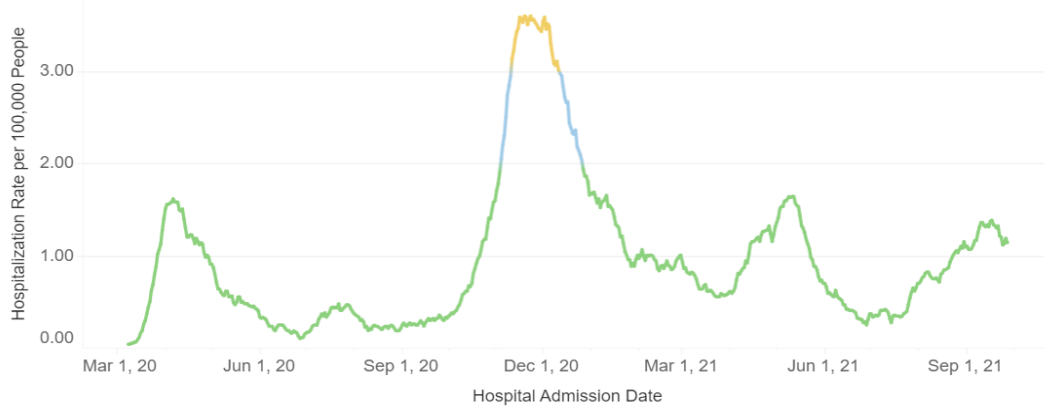
¹⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, COVID Data Tracker, available at <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited October 5, 2021).

¹⁸ *Id.*

¹⁹ Includes confirmed and probable cases of COVID-19 in Jefferson County reported to public health. Confirmed cases are people who have tested positive via PCR or other molecular testing. Probable cases are people who had close contact with a confirmed case and have symptoms consistent with COVID-19, have a death certificate listing COVID-19 as a cause of death and have no laboratory test of have a positive antigen test. Data accessed September 16, 2021. COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, Colorado COVID-19 Data, available at <https://covid19.colorado.gov/data> (last visited October 5, 2021).

The hospitalization rate per 100,000 for COVID-19 in Jefferson County rose sharply over the summer and early fall in a 5th wave of COVID-19 and currently exceeds the hospitalization rate per 100,000 seen at this time last year as demonstrated in the graph below.²⁰

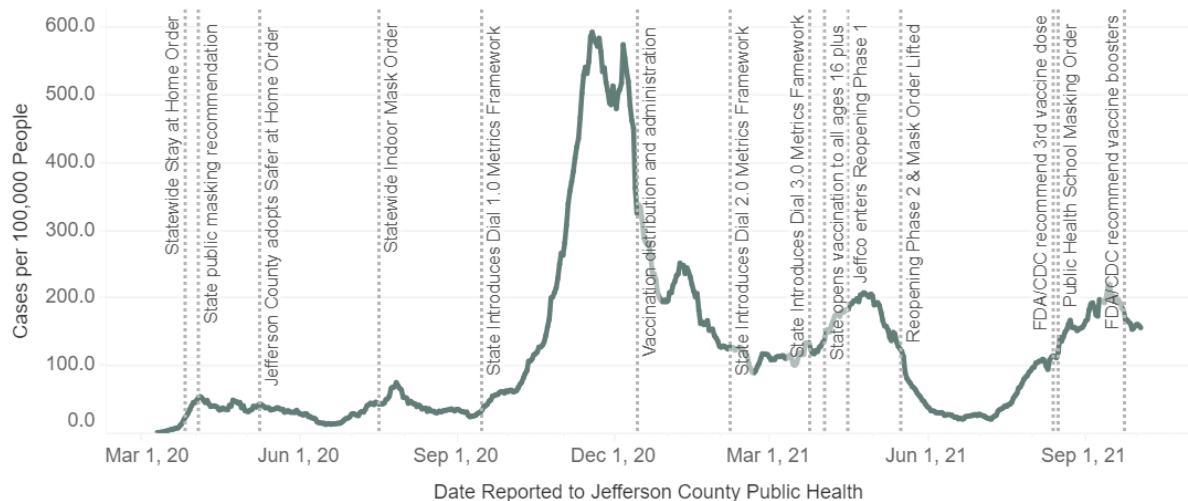
14-Day Rolling Average COVID-19 Hospitalization Rate per 100,000 people



Note: Due to delays in identifying and reporting of hospitalizations related to COVID-19, the data displayed above do not include the most recent seven days of hospitalizations.

The cases per 100,000 also rose sharply in summer and early fall and currently exceeds the number of cases per 100,000 seen at this time last year as demonstrated in the graph below.²¹

Seven Day Case Incidence Rate per 100,000 people



Vaccination is the most effective way to prevent transmission of COVID-19, to limit COVID-19 hospitalizations and deaths and to prevent the health care system from becoming overwhelmed. When vaccination is not possible, a layered viral mitigation strategy including wearing Face

²⁰ <https://www.jeffco.us/4007/Case-Summary> (last accessed October 6, 2021).

²¹ <https://www.jeffco.us/4007/Case-Summary> (last accessed October 6, 2021).

Coverings, testing, social distancing, hand hygiene, and ventilation decreases risk of transmission of COVID-19.

C. Public Health Emergency Declarations and Orders

On January 31, 2020, then-Secretary of Health and Human Services Alex Azar declared a Public Health Emergency under the Public Health Services Act for the COVID-19 pandemic.²² The current Secretary of Health and Human Services, Xavier Becerra, most recently renewed the Public Health Emergency on July 19, 2021.²³

On March 10, 2020, the Governor of the State of Colorado, Jared Polis (“Governor”) declared a State of Emergency related to the presence of COVID-19 in the State of Colorado, and this disaster declaration was extended on July 8, 2021 through Executive Order D2021-122 and most recently on October 3, 2021 through Executive Order D2021-132.

On March 13, 2020, by Proclamation 9994, President Trump declared a national emergency concerning the coronavirus disease 2019 (COVID-19) pandemic. Because the COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation, on February 24, 2021, President Biden gave notice that he was continuing the national emergency declaration. That Proclamation remains in effect today.²⁴

On May 21, 2020, the Governor issued [Guidance to Employers and Places of Public Accommodation](#) regarding equal opportunity employment and reasonable accommodations due to the presence of COVID-19.

On July 30, 2021, Governor Polis announced that by September 20, 2021, all Colorado State employees were required to either be fully vaccinated against COVID-19 or participate in serial testing and continue mask-wearing indoors in public spaces.²⁵

On September 9, 2021, President Biden announced that the Department of Labor is developing an emergency rule to require all employers with one hundred (100) or more employees to require

²² CONGRESSIONAL RESEARCH SERVICE, *Federal Emergency and Major Disaster Declarations for the COVID-19 Pandemic* (June 4, 2021), available at, <https://sgp.fas.org/crs/homesec/R46809.pdf>

²³ U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, *Renewal of Determination That a Public Health Emergency Exists* (July 19, 2021), available at, <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx>

²⁴ THE WHITE HOUSE, *National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic* (February 24, 2021), available at, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/#:~:text=On%20March%2013%2C%202020%2C%20by,and%20safety%20of%20the%20Nation.>

²⁵<https://www.colorado.gov/governor/news/5891-governor-polis-require-regular-testing-all-unvaccinated-state-employees>

their employees to show proof of vaccination or provide a negative COVID-19 test at least once per week.²⁶

INTENT

The intent of this Order is to slow the spread of COVID-19 to the greatest extent possible in order to reduce unnecessary death and serious illness, to maintain hospital capacity, and to protect those members of the public who must do business with Local Governments in Jefferson County by requiring Local Government Workers to submit to regular COVID-19 testing or provide proof of full COVID-19 vaccination, much like the recent federal mandate for employers with 100 or more employees, but under the terms specified herein.

Except as provided below, all Local Government Workers shall submit a negative COVID-19 test result no less frequently than once every seven (7) days in order to report to work in person as outlined in this Order. Local Government Workers may opt out of the testing requirements of this Order by providing proof of Full Vaccination to their employer. However, nothing in this Order prohibits a Local Government employer from requiring all employees to test weekly regardless of vaccination status. All provisions of this Order should be interpreted to effectuate this intent. Failure to comply with any of the provisions of this Order constitutes an imminent threat and creates an immediate menace to public health.

ORDER

Pursuant to the authority granted the Jefferson County Board of Health in C.R.S. §§ 25-1-506(3)(b) and 25-1-508(5)(g), and consistent with CDPHE and the CDC's guidance, the following is ordered:

1. **Definitions.**

- a. **Full Vaccination or Fully Vaccinated** means an individual is considered fully vaccinated two (2) calendar weeks after an individual has received all required doses of the prescribed COVID-19 vaccine. Unless an individual is Fully Vaccinated, they are considered Unvaccinated.
- b. **Local Government** means Jefferson County government and any municipality within Jefferson County. Local Government does not include school districts or special districts (also known as Title 32 districts).
- c. **Outbreak** means five (5) or more epidemiologically linked or confirmed or probable cases of COVID-19, of which at least one case has had a positive molecular amplification test or antigen test, in a facility (or non-household) group with onset in a fourteen (14)-day period.
 - i. Antigen tests must be in a respiratory specimen;

²⁶ THE WHITE HOUSE, *Remarks by President Biden on Fighting the COVID-19 Pandemic* (September 9, 2021), available at, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/09/remarks-by-president-biden-on-fighting-the-covid-19-pandemic-3/>

- ii. The five (5) epidemiologically-linked cases must have an onset of the contagious period no more than fourteen (14) days between case 1 and case 5; and
 - iii. The five (5) or more cases that are used to meet the Outbreak definition must be from at least five (5) different households.
- d. **Moderate or Low Transmission** means moderate or low transmission as measured by the [CDC Transmission Tracker](#).
- e. **Remote Work** – a Worker is deemed to work remotely 100% of the time when that individual works entirely from their home, meaning that they never enter into Local Government-owned or leased facilities or interact with members of the public in person while serving in their official capacity as a Local Government Worker.
- f. **Substantial or High Transmission** means substantial or high transmission as measured by the [CDC Transmission Tracker](#).
- g. **Worker** means any full time, part time, temporary, or limited employee. Worker also includes any contractors or volunteers who perform any work functions on behalf of a Local Government or any of its appointed or elected officials.

2. Testing and Reporting Requirements.

- a. Testing and Reporting Requirements. As of November 1, 2021, all Local Government Workers must submit a negative COVID-19 test result to his or her employer no less frequently than once every seven (7) days in order to report to work in person. The date on the test result must be within seven (7) days of the date on which it is submitted. Additionally, all Local Governments must implement a COVID-19 testing policy with the following elements:
 - i. Maintain a COVID-19 testing policy which documents which Workers are required to submit weekly tests and evidence of submission of weekly tests by those required to submit test results. Local Governments must report all test results to CDPHE.
 - ii. All Workers must report positive COVID-19 test results to their employer, even if the Worker has opted out of the testing requirement by providing proof of Full Vaccination. Local Governments must follow CDPHE tests reporting guidelines for their Workers (<https://cdphe.colorado.gov/report-a-disease/covid>)
 - iii. All Workers experiencing symptoms of illness, regardless of their vaccination status, must leave the work setting and take a molecular/PCR COVID-19 tests and present a negative test result before being allowed to return.
- b. Testing Options. The following means of testing are permitted:

- i. Molecular tests (PCR), a molecular amplification test to detect viral genetic material from the virus that causes COVID-19.
 - ii. Antigen tests, a rapid test to detect fragments of proteins found on or within the virus that causes COVID-19.
 - iii. All tests must have the ability to be proctored. A test is proctored when a trained professional observes the sample and testing so that the integrity of the test can be maintained. Proctoring of tests is recommended but not required.
 - c. Proof of Full Vaccination Opt-Out. Unless a Local Government employer requires weekly testing of all employees regardless of vaccination status, Workers may opt out of the weekly testing requirement by submitting proof of Full Vaccination to their employer. In the absence of knowledge to the contrary, documentation of Full Vaccination will be accepted as valid.
3. **Exemptions to Testing Requirement.** Workers who engage in Remote Work 100% of the time are not subject to the testing or proof of Full Vaccination requirements of this Order.
4. **Isolation and Quarantine.** As prescribed by JCPH, Workers who test positive for COVID-19, regardless of the type of test, shall not report to work in person at a Local Government office until their isolation period of ten (10) days has elapsed and Workers identified as close contacts of cases shall not report to work in person at a Local Government office until their quarantine period has elapsed.
5. **Outbreaks.** If JCPH identifies an Outbreak in a Local Government, JCPH and the Local Government shall work cooperatively to identify a subset of Workers impacted by the Outbreak (the “Impacted Workers”). The Impacted Workers will be required to undergo routine testing for COVID-19 as described in this Order and shall be required to submit a negative COVID-19 test twice per week, defined as no less frequently than once every four (4) days, until the Outbreak is resolved, in order for such Impacted Workers to report to work in person. The Outbreak is considered resolved when the Local Government or group of Impacted Workers goes twenty-eight (28) days without detection of a new COVID-19 case, confirmed or probable.
6. **Americans with Disabilities Act.** The requirements of this Order shall be applied in a manner consistent with the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*), Title VII of the Americans with Disabilities Act (42 U.S.C. § 2000e *et seq.*), the Colorado Anti-Discrimination Act (C.R.S. §24-34-401 *et seq.*), and any other relevant federal or State law.
7. **Recommendations.** JCPH still recommends that all individuals aged two (2) and older who have not been vaccinated practice social distancing of six (6) feet from non-household members, regular handwashing, and wear a Face Covering whenever they are near non-household members.
8. **Conflict and Preemption.**

- a. Nothing in this Order should be construed to preempt any State of Colorado regulations (including CDPHE Orders and Executive Orders) concerning Testing or Vaccination requirements beyond those contained in this Order.
 - b. Nothing in this Order should be construed to preempt any local public health orders.
 - c. Nothing in this Order shall be construed to prevent a Local Government from adopting more protective standards than those contained in this Order.
9. **Reasonable Accommodations.** JCPH recommends that all government facilities subject to this Order review the State of Colorado's [Civil Rights Guidance](#).
10. **Legal Recourse.** Any facility that is in violation of this Order may be subject to a civil action, including but not limited to injunctive relief pursuant to C.R.S. § 25-1-514 and reimbursement of expenses pursuant to C.R.S. §25-1-516(3).
11. **Severability.** If any provision of this Order, or its application to any person or circumstance, is held to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
12. **Duration.** This JCPH Public Health Order 21-005 shall be in effect from November 1, 2021, at 12:01 a.m. and shall remain in effect at all times Jefferson County is in Substantial or High Transmission. However, this requirement shall be suspended when Jefferson County has experienced at least twenty-one (21) consecutive days in Moderate or Low Transmission. If this requirement has been suspended due to Moderate or Low Transmission, but Jefferson County subsequently experiences five (5) consecutive days in Substantial or High Transmission, then this Order shall be reinstated.

Along with CDPHE, JCPH is tasked with protecting the health and welfare of the citizens of Jefferson County by investigating and controlling cases of epidemic and communicable disease. This Order is necessary to control the transmission of disease to others. Immediate issuance of this Order is necessary for the preservation of public health, safety, or welfare.

If you have questions regarding this Order, please contact the JCPH at HealthEPR@jeffco.us or view the COVID-19 information on JCPH's website at www.jeffco.us/coronavirus.

Issued by:



Lane Drager
Vice President, Jefferson County Board of Health

October 12, 2021