

September 8, 2020

C-4

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Confirm the City Manager's promulgation of the Order for Control of COVID-19 Access to Diagnostic Testing Through Health Care Facilities issued on August 26, 2020, with an effective date of September 7, 2020, by the City of Long Beach Health Officer as a regulation. (Citywide)

DISCUSSION

On March 19, 2020, the City's Health Officer issued the "Safer at Home Order for Control of COVID-19" (Health Order) to mitigate the effects of COVID-19 within Long Beach. The City's Health Officer has revised the Health Order from time to time, as necessary, to protect public health and safety during this ongoing emergency. On August 26, 2020, the City's Health Officer issued the attached Order for Control of COVID-19 Access to Diagnostic Testing Through Healthcare Facilities, with an effective date of September 7, 2020, The Order was issued to ensure access to COVID-19 diagnostic testing in outpatient/ambulatory care settings to effectively prevent, clinically manage, and control COVID-19 in Long Beach.

On May 12, 2020, the City Council adopted Long Beach Municipal Code (LBMC) Chapter 8.120, "Temporary Enforcement of Long Beach Health Orders Related to COVID-19," which became effective immediately as an urgency Ordinance. Chapter 8.120 requires, where practicable, the City Council to confirm COVID-19 Health Orders for the sole purpose of authorizing the City Manager's promulgation of such Health Orders. In the event it is not feasible to do this, the City Manager is required to, within 14 days of promulgation of said Health Orders, request the City Council to confirm the City Manager's promulgation of the Health Order. The City Manager's promulgation of the Health Order, and City Council's confirmation of such orders, authorizes enforcement authority of the Health Orders under the Proclamation of Local Emergency and provisions of Chapter 8.120.

This process recognizes the potential need for the City's Health Officer to quickly amend or update, and the City Manager to promulgate as a regulation under the LBMC, City Health Orders that protect life and property as affected by the COVID-19 emergency. The process allows for the City to respond to the rapid development of COVID-19, while ensuring the City Council maintains oversight of the COVID-19 local emergency and the City Manager's promulgation of related orders.

This matter was reviewed by Deputy City Attorney Taylor M. Anderson and Budget Manager Grace H. Yoon on August 31, 2020.

TIMING CONSIDERATIONS

City Council action is requested on September 8, 2020. Confirmation by the City Council of the revised Health Order within 14 days of promulgation is a requirement of LBMC Section 8.120. The Order for Control of COVID-19 Access to Diagnostic Testing Through Health Care Facilities was promulgated on August 26, 2020.

EQUITY LENS

The City has incorporated the Equity Toolkit into the City's Emergency Operations Center, as requested by the City Council on April 21, 2020. The revised Health Order takes the City's equity approach into consideration when the Health Order is drafted and implemented. The City's enforcement model for compliance with the Health Order prioritizes education with the community first.

FISCAL IMPACT

The full fiscal impact of the implementation and enforcement of the revised Health Order is unknown at this time, due to the unprecedented and quickly changing nature of the response to the pandemic. The Health Order and its amendments have an inherent impact on the health of the community and economic activity of Long Beach. There is substantial evidence provided through various public City reporting that the Health Order and its amendments are positively impacting the health and safety of Long Beach residents; and, there is substantial evidence, also provided through other public documents issued by the City, that the Health Order and its amendments are negatively impacting the economy and the City's financial status. As the Health Order is modified from time to time, the modifications are intended to ensure compliance with State directives and to strike a balance, appropriate at the time of modification, between the safety and well-being of residents and other important considerations such as economic impacts. This recommendation has no staffing impact beyond the normal budgeted scope of duties and is consistent with existing City Council priorities.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



THOMAS B. MODICA
CITY MANAGER

ORDER FOR CONTROL OF COVID-19 ACCESS TO DIAGNOSTIC TESTING THROUGH HEALTHCARE FACILITIES

Date Order Issued: August 26, 2020

Date Effective: September 7, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both (California Health and Safety Code §120275 et seq; Long Beach Municipal Code § 8.120.030.A and 8.120.030.E.3.)

SUMMARY OF THE ORDER:

This Long Beach Health Officer Order (Order) complements existing Safer at Home Health Orders (Prior Orders) issued by the City of Long Beach Health Officer (Health Officer). This Order is issued to ensure access to COVID-19 Diagnostic Testing in outpatient/ambulatory care settings to effectively prevent, clinically manage, and control COVID-19 in Long Beach.

This Order is effective within the City of Long Beach. This Order is effective Monday, September 07, 2020 and will continue until further notice.

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE LONG BEACH HEALTH OFFICER ORDERS:

1. Acute-, sub-acute, and long-term healthcare facilities have or are already expected to develop and maintain their ability to test patients, as appropriate and in accordance with the Los County Department of Public Health (County Public Health) testing guidelines, for acute infection with the SARS-CoV-2 virus and to ensure optimal care options, lessening the risk of nosocomial infections, and detecting and controlling

outbreaks within their facilities. The intent of this Order is to increase access to Diagnostic Testing, as defined in Section 8 below, in the outpatient/ambulatory care setting in order to effectively prevent, clinically manage, and control COVID-19 in our community. Expansion of Diagnostic Testing is essential because it helps identify individuals who are infectious with the virus that causes COVID-19 (SARS-CoV-2), ensure those individuals receive appropriate care, protect vulnerable populations, contain spread of COVID-19, better understand the spread of the disease in the City of Long Beach (“City”), and ultimately prevent serious illness and death. Unlike early in the pandemic, laboratory testing capacity has now increased significantly, as has the supply of collection material such as swabs. The State of California’s Testing Task Force is working with healthcare providers to address any testing supply shortages that arise. As of the effective date and time of this Order set forth in Section 14 below, Healthcare Facilities, as defined in Section 8, are required to follow the provisions of this Order.

2. All Healthcare Facilities in the City must provide timely access to Diagnostic Testing to the following categories of individuals who seek care or request testing, whether in-person or by phone or electronic message, *provided that* such individuals (i) are among the applicable facility’s pool of current patients; (ii) are assigned to the facility (or a network that includes the facility) by an insurer or other similar payor; or (iii) in the case of an urgent care clinic or other facility serving members of the public on a walk-in basis, meet the current County Public Health COVID-19 testing guidelines <http://publichealth.lacounty.gov/acd/nCorona2019/test.htm>, including but not limited to:
 - a. All Symptomatic Persons, as defined in Section 8, regardless of age, hospitalization status, comorbidities, or other risk factors for COVID-19;
 - b. All persons, with or without COVID-19 Symptoms, as defined in Section 8, who report that they were a close contact of a laboratory-confirmed or suspected case of COVID-19, including those exposed in a High-Risk Setting, as defined in Section 8, within 2 and 14 days prior to presenting for testing; and
 - c. All persons who are required by a public health order to be tested to diagnose additional cases and to contain further spread if the disease.
3. Diagnostic Testing can be provided either at:
 - a. The Healthcare Facility itself or a specified clinic or testing center operated by the Healthcare Facility; or
 - b. Another healthcare facility or testing center established and operated by a pharmacy or commercial lab that is contracted with the Healthcare Facility for Diagnostic Testing.
4. Where applicable, Healthcare Facilities should seek payment from patients’ group health plans or health insurance issuers for any fees, costs, or charges incurred in ordering or completing Diagnostic Testing under this Order. The California Department of Health Care Services (DHCS) and the California Department of Managed Health Care (DMHC) have both issued guidance and/or regulation related

to COVID-19 diagnostic testing. Healthcare Facilities shall comply with this guidance as well as with all state and/or federal laws prohibiting patients from being billed for fees, costs, or charges related to Diagnostic Testing.

5. Nothing in this Order prohibits a Healthcare Facility from also offering COVID-19 Diagnostic Testing to other categories of persons at its own discretion assuming sufficient testing resources are available to the Healthcare Facility and its test turnaround time is reasonable, ideally less than 48 hours. Healthcare Facilities are strongly urged to expand this testing to the greatest extent possible, and to implement the recommendations and guidance from the Health Officer regarding broader testing of individuals for COVID-19, see [COVID-19 Testing Guidelines](#).
6. Healthcare Facilities must publicize information through their typical channels as to how patients can access Diagnostic Testing. Healthcare Facilities that have a public or patient-facing website must post information on their website about how patients can access Diagnostic Testing from the Healthcare Facility.
7. Healthcare Facilities in the City must, as applicable, continue to comply with the reporting requirements regarding COVID-19 or SARS-CoV-2 virus testing results, including positive results from point-of-care testing performed on-site, set forth in the March 24, 2020 Health Officer Order or any subsequent Health Officer order, as well as any additional reporting required or requested by the Health Officer. Current Long Beach Public Health Reporting Guidelines can be found [here](#) and COVID-19 Case Report forms can be found at <http://longbeach.gov/globalassets/health/media-library/documents/diseases-and-condition/information-on/novel-coronavirus/hcps/covid-19-case-report-form>.

DEFINITIONS

8. For the purposes of this Order, the following terms are defined as follows:
 - a. **“COVID-19 Symptom”** means a new-onset of signs or symptoms consistent with COVID-19, including, but not limited to, fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscles or body aches, headache, new loss of smell or taste, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea, or as per any updated CDC guidance regarding COVID-19 symptoms.
 - b. **“Diagnostic Testing”** means the use of diagnostic tests related to SARS-CoV-2, the virus that causes COVID-19 or novel coronavirus infection, when the primary purpose of such testing is intended for individualized diagnosis or treatment. Only tests with [emergency use authorizations](#) (EUA) from the U.S. Food and Drug Administration (FDA) should be used for patient care. Currently there are two types of diagnostic tests – molecular tests that detect the virus’s genetic material, and antigen tests that detect specific proteins on the surface of the virus. See County Public Health’s [Currently Available SARS-CoV-2 Test Types](#) webpage for more information.

Currently available SARS-CoV-2 antigen tests are considerably less sensitive than molecular tests and must be used in accordance with both the manufacturer's Instructions for Use and the Association of Public Health Laboratory's (APHL) [Considerations for Implementation of SARS-CoV-2 Rapid Antigen Testing](#) guidance. The APHL document provides information on scenarios where SARS-CoV-2 Antigen tests may be considered for use as well as scenarios when they should not be considered. Additional diagnostic tests may be authorized in the future. The Los Angeles County Department of Health Services (LAC DHS) has created and updates a [Reference Guide to Labs Providing COVID-19 Testing](#) to help Healthcare Facilities in Los Angeles County identify a laboratory provider that best fits their needs. The State of California's COVID-19 Testing Task Force (TTF) may also be able to provide assistance to healthcare facilities experiencing shortages and publishes a list of laboratories with testing capacity that are willing to receive samples to provide COVID-19 testing on its website at <https://testing.covid19.ca.gov/covid-19-testing-task-force-laboratory-list>.

- c. **“Healthcare Facility”** means (1) any clinic or urgent care facility located in the City that is owned, directly or indirectly, by an entity that also owns or operates an acute care hospital, regardless of where that acute care hospital is located or (2) any free-standing clinic (e.g., Federally Qualified Health Center, commercial urgent care clinic, or private provider) at such locations where the clinic orders or performs testing for other respiratory infections (e.g., influenza) for its patients or members of the public.
- d. **“High-Risk Setting”** means a setting in which workers are at a high risk for exposure to SARS-CoV-2 due to frequent face-to-face interaction with members of the public or residents of a congregate setting (e.g. nursing facility, shelter, jail) and inability to maintain physical distancing at work, including, but not limited to, first responders, staff of congregate settings, pharmacy employees, food service workers, delivery workers, public transportation operators, and grocery store clerks. The designation of “High-Risk Setting” may be further elaborated by guidance to healthcare providers issued by the City Health Officer.
- e. **“Symptomatic Person”** means any individual, regardless of age, who has any COVID-19 Symptom.

REASONS FOR THE ORDER

9. This Order is issued based on the need for increased testing to detect COVID-19 within the City. Due to the outbreak of the COVID-19 virus in the general public, which remains a pandemic according to the World Health Organization, there is a public health emergency throughout the City. Adequate and widespread availability of Diagnostic Testing are essential to detecting both symptomatic and asymptomatic transmission of the virus, ensuring persons with COVID-19 receive appropriate care,

identifying cases that need to isolate themselves from others, and informing public health case investigations and contact tracing efforts, thereby slowing virus transmission as much as possible in order to protect the most at risk of serious illness from this infection, to prevent further infections and serious illness and death, and to prevent the healthcare system from being overwhelmed. Diagnostic Testing is also an essential tool in the City mitigation efforts in order to understand the prevalence and spread of the disease in the City.

10. Existing community transmission of COVID-19 in Beach continues to present a substantial and significant risk of harm to residents' health. No vaccines nor failsafe treatments are yet available to protect against COVID-19. As of August 25, 2020, there have been at least 10,241 cases of COVID-19 and 208 deaths reported in Long Beach.

ADDITIONAL TERMS

11. The City shall promptly provide copies of this Order by: (a) posting it on the Long Beach's Department of Health and Human Services website <http://www.longbeach.gov/health/>), (b) posting it at the Civic Center located at 411 W. Ocean Blvd., Long Beach, CA 90802, (c) providing it to any member of the public requesting a copy, (d) issuing a press release to publicize the Order throughout the City, and (e) by serving via email on large facilities known to the Health Officer that are likely to be subject to this Order (but service via email is not required for compliance).
 - a. The owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public requesting a copy. The owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public requesting a copy.
 - b. Because guidance may change, the owner, manager, or operator of any facility that is subject to this Order is ordered to consult the Long Beach Department of Health and Human Services' website (<http://www.longbeach.gov/health/>) daily to identify any modifications to the Order and is required to comply with any updates until the Order is terminated.
12. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.
13. This Order incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom and the March 4, 2020 declarations of a local and public health emergency issued by the Long Beach City Council, the Long Beach City Manager, and Long Beach Health Officer, respectively, and as they may be supplemented.

14. This Order shall become effective at 12:01 am on **September 7, 2020** and will continue to be until it is revised, rescinded, superseded, or amended in writing by the Health Officer.

IT IS SO ORDERED:

Anissa Davis, MD, DrPH,
Health Officer, City of Long Beach

Date: **August 26, 2020**

PROMULGATION OF EMERGENCY REGULATIONS

As Director of Civil Defense for the City of Long Beach pursuant to Long Beach Municipal Code ("LBMC") section 2.69.060.A, and in accordance with the provisions of LBMC Chapter 8.120, I am authorized to promulgate regulations for the protection of life and property as affected by the COVID-19 emergency pursuant to Government Code section 8634, and LBMC sections 2.69.070.A and 8.120.020. The following shall be in effect for the duration of the Long Beach Health Order, ORDER FOR CONTROL OF COVID-19: ACCESS TO

DIAGNOSTIC TESTING THROUGH HEALTHCARE FACILITIES, issued above, which is incorporated in its entirety by reference:

The Long Beach Health Officer Order, ORDER FOR CONTROL OF COVID-19: ACCESS TO DIAGNOSTIC TESTING THROUGH HEALTHCARE FACILITIES, shall be promulgated as a regulation for the protection of life and property.

Any person who, after notice, knowingly and willfully violates or refuses or neglects to conform to the above referenced lawfully issued Health Order shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), by imprisonment for a period not exceeding six (6) months, or by both such fine and imprisonment. (Long Beach Municipal Code sections 8.120.030.A and 8.120.030.E.3.)

IT IS SO ORDERED:

Thomas B. Modica
City Manager, City of Long Beach

Date: **August 26, 2020**