

Third Ordinance on Measures Required to Protect the Population from Infections with the SARS-CoV-2 Coronavirus (Third SARS-CoV-2 Infection Protection Measures Ordinance – 3. InfSchMV)

From June 15, 2021

In the Version of the

Ninth Ordinance to Amend the Third SARS-CoV-2 Infection Protection Measures Ordinance

From October 26, 2021

On the basis of § 2 sentences 1 and 2 of the Berlin Covid-19 Parliamentary Participation Act (*Berliner COVID-19-Parlamentsbeteiligungsgesetz*) of February 1, 2021 (Law and Ordinance Gazette (GVBl.), p. 102), and § 32 sentences 1 and 2 in conjunction with § 28(1) and § 28a(1) of the Protection against Infection Act (*Infektionsschutzgesetz*) of July 20, 2000 (Federal Law Gazette (BGBl.) I, p. 1045), last amended by Article 8(8) of the Act of September 27, 2021 (BGBl. I, p. 4530), and § 11 of the Covid-19 Protective Measures Emergency Ordinance of May 8, 2021 (BAntz AT 08.05.2021 V1), the Senate hereby enacts the following:

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Preamble

The objective of this Ordinance is to continue to control the progressive spread of the SARS-CoV-2 coronavirus and COVID-19 disease caused by it; this is to be done by taking measures to protect public health and manage the disease's impact on the public health system.

Article 1

Basic Obligations, Protection and Hygiene Regulations

§ 1

Basic hygiene measures in the pandemic

(1) Every person is required to observe the generally recommended basic measures for infection prevention, that is, maintaining the minimum distance of 1.5 metres from other persons, appropriate hand hygiene, coughing and sneezing etiquette and sufficiently airing out rooms when staying in enclosed spaces. People who show symptoms of COVID-19 according to the current criteria of the Robert Koch Institute (RKI) are advised to limit their social contacts to people of their own household for the duration of the symptoms and to have a doctor determine the origin of these symptoms.

(2) In public spaces, there is a general obligation to maintain the minimum distance of 1.5 metres referred to in subsection 1. This shall not apply if physical proximity of less than 1.5 metres cannot be avoided under the circumstances, in particular

1. to immediate family members,
2. in the provision of health care and nursing activities, including the supply of therapeutic, assistance and nursing aids,
3. when assisting the seriously ill and dying,
4. in childcare for children within the meaning of § 22 of Book Eight of the Social Code (*Sozialgesetzbuch*) - Child and Youth Services - in the version published on September 11, 2012 (BGBl. I p. 2022), last amended by Article 1 of the Act of June 3, 2021 (BGBl. I p. 1444), as amended, in schools including second chance schools within the meaning of the Schools Act (*Schulgesetz*) of January 26, 2004 (GVBl. p. 26), last amended by Article 35 of the Act of October 12, 2020 (GVBl. p. 807), as amended, and in vocational training and higher education,
5. in the provision of close-contact services,
6. in structurally small spaces that must be used by several people at the same time, for example in public transport or motor vehicles, or
7. if a sector-specific general hygiene policy pursuant to § 5(2) or a legal ordinance passed based on § 39 as an exception permits less than the minimum distance of 1.5 metres and other measures are in place to ensure protection against infection.

For the purposes of this Ordinance, public space includes all places outside the private dwelling and the associated property.

(3) Immediate family members within the meaning of this Ordinance are spouses or partners, members of one's own household and persons for whom custody or visiting rights exist.

(4) For the special protection of persons at increased risk of severe COVID-19 disease, care should be taken in contact with them to ensure surfaces and sanitary areas are adequately cleaned, to maintain the minimum distance and to wear a medical face mask at all times. Each person is also encouraged to take a rapid point-of-care (PoC) antigen test before having contact with such persons, including self-tests, to further reduce the risk of infecting others through an undetected infection without symptoms.

§ 2

Medical face masks and FFP-2 masks

(1) If this Ordinance mandates masks, a medical mask is to be worn unless otherwise specified. The requirement to wear a mask does not apply if persons are at the set place assigned to them and adequate mechanical ventilation is ensured in enclosed spaces. A mask shall be worn such that the mouth and nose are covered closely and the spread of potentially infectious droplets and aerosols through breathing, coughing, sneezing or speaking is reduced. For the purposes of this Ordinance, a medical face mask is a protective mask made of special materials which meets the requirements set out in the Appendix and which must not have an exhalation valve. For the purposes of this Ordinance, an FFP2 mask is a protective mask made of special materials which meets the requirements set out in the Appendix and which must not have an exhalation valve. In cases in which this Ordinance requires a medical face mask to be worn, an FFP2 mask may also be worn. The obligation to wear a medical face mask may be stipulated in a sector-specific general hygiene policy pursuant to § 5(2) or in a legal ordinance issued on the basis of § 39.

(2) In cases in which this Ordinance requires a medical face mask or FFP2 mask to be worn, this requirement shall not apply to

1. children up to the age of six,
2. children up to the age of 14 in regard to FFP2 masks, although they must wear medical face masks instead,
3. persons who cannot wear a medical face mask due to a health impairment, chronic illness or disability, as certified by a physician; the responsible persons are authorised to see the original medical certificate to check whether the requirements for this exception are met,
4. deaf persons and the hard of hearing as well as persons who communicate with them, as well as persons accompanying them,
5. for customers in handicraft and service operations in the area of bodily hygiene for the duration of a service during which the customer cannot continuously wear a medical face mask (services close to the face) or
6. if additional exceptions are provided for in a sector-specific general hygiene policy in accordance with § 5(2) or a legal ordinance issued on the basis of § 39.

(3) At private gatherings or gatherings in public spaces, that is, whenever people are together, all participants are required to wear a medical face mask if it is not possible to maintain the minimum distance.

§ 3 Access control

In cases in which access control is required by this Ordinance, when a facility is opened, to calculate the maximum number of visitors or other users, there is a guideline of a maximum of one person per 5 square metres of area being used to ensure the minimum distance can be maintained.

§ 4 Documentation of attendance

(1) In cases in which this Ordinance requires attendance to be documented, this duty shall be carried out by ensuring that the following data can be traced for each person present:

1. Name and surname,
2. Phone number,
3. Borough or municipality of the place of residence or permanent residence, (not necessary when using digital applications),
4. Full address and email address, if one exists,
5. Time the person was present,
6. Seat or table number, if applicable (not necessary when using digital applications) and
7. Confirmation that a test was carried out in accordance with § 6(1) sentence 1, number 1 or 2, or that a certificate was submitted in accordance with § 6(1) sentence 1, number 3 or 4, or § 8(1) numbers 1 to 3, if such a certificate is prescribed in this Ordinance; this requirement may be waived in the case of electronic record-keeping in accordance with § 6(1) sentence 1, number 3 or 4, in the formats recognised by the Senate Department responsible for health.

(2) The attendance documentation may only be used to execute infection control laws, especially for contact tracing. The data collected in accordance with subsection 1, numbers 1 to 7 shall be kept or stored for a period of two weeks, by way of derogation the data collected with digital applications in accordance with subsection 1, number 7 shall be kept or stored for a period of 48 hours, beginning with the end of the event giving rise to the obligation to document attendance, and must be kept or stored in such a way that it is not accessible to third parties. After the retention period has expired, this attendance documentation must be deleted or destroyed.

(3) The competent authorities must be given access to the attendance list on request to control the obligations according to subsections 1 and 2. It must also be handed over or otherwise made available in an appropriate manner to the competent authority on request if it is established that one of the participants was ill, suspected of being infected, infectious or a virus-shedder as stated in the Protection against Infection Act at the time the data was collected. Sentences 1 and 2 shall not apply if attendance is documented by the users by means of a digital application that does not allow the responsible person(s) to adhere to these provisions for technical reasons.

(4) The requirement to document attendance may also be fulfilled using digital applications, including those that enable automated data collection without the person responsible being involved in the data collection process. The persons responsible must ensure that the digital applications are used properly. A possibility to document attendance without using a digital application must be provided in all cases. The responsible persons are authorised and required to examine the original certificates according to § 6(1) sentence 1, number 3 or 4, or proof according to § 8(1) numbers 1 to 3, and to check the identity of the person present by means of an official form of identification with a photo.

(5) The information in accordance with subsection 1 must be provided completely and truthfully. This also applies if the users register with a digital application to document attendance. The persons responsible referred to in subsection 1 must deny access or permission to remain to any person present who provides incomplete or manifestly false information. If attendance is documented using a digital application that does not allow the responsible person(s) to adhere to these provisions for technical reasons, sentence 3 applies with the condition that the responsible person(s) must ensure that the digital application is used properly.

§ 5

Protection and hygiene plan

(1) Those responsible for any type of event, with the exception of those pursuant to § 12(2), with more than 20 persons present at the same time, in companies and in other facilities as well as for sports facilities and in associations, shall draw up an individual protection and hygiene plan in accordance with the specific requirements of the respective event and submit it to the competent authority upon request. If this Ordinance provides for the preparation of and compliance with an individual protection and hygiene concept, the specifications shall apply with the following objectives:

1. Reducing contacts between people by maintaining the minimum distance of 1.5 metres and the maximum number of people permitted for the area in question;
2. Ensuring the control of access and avoidance of queues using pathways and signs;

3. Sufficiently airing out rooms using shock and cross ventilation several times each day or operating a suitable ventilation system in enclosed spaces;
4. Ensuring contact tracing.

The notices regarding the rules of distance and hygiene must be posted so that they are clearly visible. The persons responsible according to sentence 1 must ensure that the protective measures included in the protection and hygiene plan are adhered to. When creating the protection and hygiene plan, the Robert Koch Institute's relevant recommendations for infection protection and the recommendations of the Federal Institute for Occupational Safety and Health (BAuA) on how to properly air out spaces in their respective version as well as the specifications of the respective occupational health and safety authorities must be taken into account, and the provisions of this Ordinance and sector-specific ordinances issued based on § 39 are to be observed.

(2) The Senate Department responsible in each case can, in agreement with the Senate Department responsible for health, set down a sector-specific general hygiene policy that regulates details on the requirements for the protection and hygiene plan according to subsection 1, including provisions on threshold limits and access and visiting regulations. The existing general hygiene policies are published on the website www.berlin.de/corona.

§ 6

Requirements for proof of a negative test

(1) If it is required by this Ordinance that persons must have tested negative for an infection with the coronavirus SARS-CoV-2 or show proof of a negative test result for an infection with the coronavirus SARS-CoV-2 from a recognised test, this requirement is to be fulfilled as follows:

1. The person permits a point-of-care (PoC) antigen test for an infection with the coronavirus SARS-CoV-2 to be carried out on-site and this shows a negative test result ("on-site testing location"),
2. Under the supervision of the person responsible or a person charged with supervising the test, the person who needs to show a negative test result carries out a point-of-care (PoC) antigen self-test for an infection with the coronavirus SARS-CoV-2 and this shows a negative test result after being carried out properly ("expanded admission control"),
3. The person shows written or electronic proof according to subsection 2 of a negative result for a point-of-care (PoC) antigen test or self-test for an infection with the coronavirus SARS-CoV-2 carried out within the last 24 hours to the person responsible or a person charged with the task or
4. The person shows written or electronic proof according to subsection 2 of a negative result for a current PCR test for an infection with the coronavirus SARS-

CoV-2 that is no more than 48 hours old to the person responsible or a person charged with the task.

In the case of sentence 1, numbers 1 and 2, the person getting a test has the right to have a certificate of the test result issued by the person responsible or the person charged with supervising or carrying out the test. The certificate must be presented on request to the responsible authorities for the purpose of checking testing obligations under this Ordinance. Provisions on testing at schools according to the Second School Hygiene Covid-19 Ordinance (*Schul-Hygiene-Covid-19-Verordnung*) of July 29, 2021 (GVBl. p. 926), amended by the Ordinance from August 26, 2021 (GVBl. p. 957), as amended, that deviate from sentence 1 remain unaffected.

(2) The certificate of a negative test result for a current point-of-care (PoC) antigen test, including self-tests, or PCR test for an infection with the coronavirus SARS-CoV-2 must include at least the date and time the test was carried out, the name of the person tested and the business/authority that carried out the test or, in cases that fall under subsection 1, sentence 1, number 2, the business/authority that supervised the test. The certificate should otherwise correspond to the template provided by the Senate Department responsible for health. If the certificate has been issued in an electronic format recognised by the Senate Department responsible for health, this is exempt from the obligation to name the test name and manufacturer, as well as the test centre or person who was tested. Issuing a certificate as described in subsection 1, sentence 1, number 3, in relation to a point-of-care (PoC) antigen self-test for an infection with the coronavirus SARS-CoV-2 and supervising testing may only be carried out by a person charged with doing so by the responsible authority in each case as part of the tasks with which they were charged.

(3) If it is required in this Ordinance that persons must have tested negative for an infection with the coronavirus SARS-CoV-2, this does not apply to children up to the age of 6 or for pupils subject to regular testing as part of their school attendance. Proof of being a pupil and thus regular testing as part of attending school can be shown especially by presenting a valid pupil ID. The requirement to have tested negative according to this Ordinance shall not apply to children who are tested regularly as part of attending a childcare centre.

§ 7

Regulations on isolation

(1) Persons who become aware that a point-of-care (PoC) antigen test that they have taken shows a positive result for infection with the coronavirus SARS-CoV-2 are obligated to immediately arrange for a test using nucleic acid for the coronavirus SARS-CoV-2 (PCR test) to confirm the result of the PoC antigen test subject to subsection 3, to immediately and directly go to their primary or secondary residence or other accommodation which allows for isolation after becoming aware that the PoC antigen test is

positive, and to isolate themselves there at all times for a period of 14 days as of the time the point-of-care (PoC) antigen test was taken. For the purpose of the PCR test, the person may leave the location in which they are isolating.

(2) Persons who become aware that a test they took using nucleic acid for the coronavirus SARS-CoV-2 (PCR test) is positive are obligated to immediately and directly go to their primary or secondary residence or other accommodation which allows for isolation after becoming aware that the test is positive, and to isolate themselves there at all times for a period of 14 days as of the time the point-of-care (PoC) antigen test was taken.

(3) For persons who become aware that a point-of-care (PoC) antigen self-test they took is positive for an infection with the coronavirus SARS-CoV-2, subsection 1 applies mutatis mutandis if the test was carried out under qualified supervision; if requested, a certificate stating the result is to be issued. If the test was not carried out under qualified supervision, the persons must immediately arrange for a test using nucleic acid for the coronavirus SARS-CoV-2 (PCR test). Any person who is authorised to carry out PoC testing for other persons is considered qualified supervision as stated in sentence 1.

(4) Persons in isolation shall not be permitted to receive visits from persons who are not members of their household. During the period of isolation, the persons isolating themselves shall be subject to observation by the responsible public health office.

(5) In cases of subsection 1, isolation ends with a negative result from a PCR test, but at the latest after 14 days starting at the time the point-of-care (PoC) antigen test was taken; in cases of subsection 2, isolation ends with a negative result of a PoC or PCR test carried out at the earliest on the 14th day after the PCR test that justified the isolation was taken. If symptoms started before the test was carried out, the responsible public health office can set the start of symptoms as the starting point for the isolation period by way of derogation from subsections 1 and 2.

(6) When categorising persons as close contacts to a person who has tested positive as described in subsections 1 to 3 and deciding on the close contacts' isolation, the responsible public health office must adhere to the regulations of the Robert Koch Institute valid at that time.

(7) The obligation to report infections according to the Protection against Infection Act remains unaffected.

§ 8

Regulations for vaccinated and recovered persons

(1) Any requirement under this Ordinance to have tested negative for an infection with the SARS-CoV-2 coronavirus, to submit a negative test result of a test for an infection with the SARS-CoV-2 coronavirus carried out by means of recognised tests, to accept an offer of testing or instead to have testing carried out shall not apply to the following persons:

1. Vaccinated persons who have been vaccinated with a vaccine against Covid-19 approved by the European Union if the persons' final required vaccination was at least 14 days prior,
2. Vaccinated person who
 - were issued a vaccination certificate in a third country outside the European Union for a COVID-19 vaccination received that corresponds to one of the COVID-19 vaccines named in Article 5(5) of the Regulation (EU) 2021/953 and
 - upon request were issued a vaccination certificate by the competent authorities in the Federal Republic of Germany after they sent these authorities all required information, including a reliable proof of vaccination,
3. Persons who can show proof of a positive PCR test result for an infection with the SARS-CoV-2 coronavirus taken at least six months ago and who have received at least one vaccination against Covid-19 with a vaccine approved by the European Union and whose last vaccination was at least 14 days prior and
4. Persons who can show proof of a positive PCR test result for an infection with the SARS-CoV-2 coronavirus taken at least 28 days ago but no more than six months ago.

(2) The exemptions for the groups of persons referred to in subsection 1 shall only apply if these persons do not exhibit typical symptoms that could indicate an infection with the SARS-CoV-2 coronavirus according to the currently valid criteria of the Robert Koch Institute.

1. Only persons described in § 8(1) numbers 1 to 3 may be admitted, with the exception of
 - a) children under the age of 12 who must have tested negative; § 6(3) applies mutatis mutandis, and
 - b) persons who cannot be vaccinated for medical reasons; they must have tested negative according to § 6(1) sentence 1 number 4 and show proof of their inability to be vaccinated with a certificate from a physician,
2. The personnel that has direct contact with clients or audience members may only be made up of persons described in § 8(1) numbers 1 to 3,
3. In the areas of the operational or event rooms in which the 2G condition applies, only those persons may be present who fall under § 8(1) numbers 1 to 3,

4. The responsible persons must ensure that the persons present fulfil the requirements under the numbers 1 to 3 and that persons who do not fulfil these requirements are denied access; for this purpose, they make check the proof described in § 8(1); proof of vaccination against or recovery from SARS-CoV-2 must be digitally verifiable; upon entry, the proof must be digitally verified and compared with a photo ID,
5. For the duration the 2G condition is valid, those responsible must inform about the application of 2G condition in an appropriate manner and
6. Employees who do not show proof of the requirements according to § 8(1) numbers 1 to 3 are to be offered alternate work activities without direct contact with clients or participants for the duration of the 2G condition's validity.

§ 8a
2G condition

- (1) The 2G condition is intended to allow those responsible to permit access to institutions, establishments, events or similar activities only to vaccinated or recovered persons and, in return, to be granted certain freedoms from the regulations in this Ordinance. It is also possible to make use of this option for individual days or for limited periods of time.
- (2) If this Ordinance permits events to be carried out or establishments or institutions to be opened according to 2G conditions, then when choosing to apply these conditions, the following shall apply:
 1. Only persons may be admitted who fall under § 8(1) numbers 1 to 4, with the exception of
 - a. children under the age of 12, who must have tested negative; § 6(3) shall apply mutatis mutandis, and
 - b. persons who cannot be vaccinated for medical reasons; they must have tested negative using a test according to § 6(1) sentence 1, number 4 and show proof of inability to be vaccinated as certified by a physician,
 2. the personnel may only be comprised of persons who fall under § 8(1) numbers 1 to 4,
 3. in the establishment or event rooms, no persons may be present who do not fall under § 8(1) numbers 1 to 3 and who have contact to other persons,
 4. the responsible person must ensure that the requirements according to numbers 1 to 4 are fulfilled and refuse entry to persons who do not fulfil the requirements; for this purpose, they may check proof as described in § 8(1); proof of vaccination against or recovery from SARS-CoV-2 must be digitally verifiable; upon entry, the proof must be digitally verified and compared to a photo identification, and

5. for the duration the 2G condition applies, the responsible person must inform about the applicability of the 2G condition in an appropriate manner.
6. employees who do not show proof of the requirements according to § 8(1) numbers 1 to 4, are to be offered tasks without direct customer or participant contact for the periods of time in which the 2G condition applies.

Article 2

Additional Hygiene and Protection Regulations for Particular Sectors

Part 1

Social life

§ 9

Gatherings of people

(1) Gatherings of people within the meaning of this Ordinance outdoors is only permitted with a maximum of 100 persons present at the same time.

(2) A gathering of persons within the meaning of this Ordinance occurs when persons come together and interact with each other but which is not an event as defined in § 11 or an assembly as defined in Article 8 of the Basic Law and Article 26 of the Berlin Constitution.

(3) Subsection 1 shall not apply

1. for stays in public places outdoors for the purpose of reporting by representatives of the press, radio, film or other media,
2. for the exercise of professional, mandate-related or volunteer activities, including the seasonally necessary cultivation of agricultural, horticultural and forestry land, and for political advertising to individuals or individual groups of persons within the meaning of subsection 1 for the support of parties and voter communities as well as for referendums, popular initiatives, citizens' petitions and residents' motions,
3. for the use of local public transport, trains, plans, passenger ferries and motor vehicles used for transporting passengers for a fee or for business purposes or which have to be shared by employees for professional and official purposes,
4. for the provision of integration assistance services and assistance for homeless persons,
5. for carrying out pedagogical activities outdoors by public schools and independent schools, including second chance schools and private-sector facilities within the meaning of the Schools Act, as well as day care facilities and child day care services within the meaning of the Child Care Support Act (*Kindertagesförderungsgesetz*) of June 23, 2005 (GVBl., p. 322), last amended by Article 30 of the

- Act of October 12, 2020 (GVBl., p. 807), as amended, and in the context of privately organised childcare and youth welfare services and
6. for engaging in sports permitted under this Ordinance.

§ 10

Behaviour in public spaces (prohibition of alcohol and obligation to wear a mask)

(1) The consumption of alcoholic beverages is prohibited in green spaces within the meaning of the Green Spaces Act (*Grünanlagengesetz*) of November 24, 1997 (GVBl. p. 612), as last amended by § 15(1) of the Act of September 29, 2004 (GVBl. p. 424), as amended.

(2) An FFP2 mask shall be worn in enclosed spaces by passengers when using public transport, including railway stations, airports and ferry terminals and other vehicles with changing passengers.

(3) A medical face mask must be worn:

1. by non-driving staff on public transport, including in stations, airports and ferry terminals, and in other vehicles with changing passengers,
2. in other vehicles by persons who are not driving if the vehicle is not being used exclusively by immediate family members,
3. in lifts.

§ 11

Events

(1) An event within the meaning of this Ordinance is a planned event that takes place for a limited time in which a group of people take part with a defined objective or intention, a programme sequence with thematic, related content or purpose in the definable responsibility of an organiser, a person, an organisation or an institution. Assemblies according to Article 8 of the Basic Law and Article 29 of the Berlin Constitution are not considered events. The events and types of events specifically regulated in this Ordinance shall be governed exclusively by the requirements set out in the sections pertaining to them, unless otherwise specified.

(2) Outdoor events with more than 2000 persons present at the same time are prohibited. Events in enclosed spaces with more than 1000 persons present at the same time are prohibited.

(3) At events, the assignment of seats and the seating and arrangement of tables shall be such that a minimum distance of 1.5 metres is maintained between persons who are not immediate family members or such that adequate protection against infection

can be ensured by other protective measures or safety features to reduce the spread of potentially infectious droplet particles. The minimum distance according to sentence 1 can be reduced provided that protection against droplet infections and aerosols is ensured or all attendees present have tested negative. For food and beverage sales, § 18(1) shall apply *mutatis mutandis*.

(4) By way of derogation from subsection 2, sentence 2, events may be carried out in enclosed spaces with more than the number of persons listed there present at the same time, but with a maximum of 2000 persons present at the same time, if the provisions of the general hygiene policy of the Senate Department responsible for culture, business or sport are adhered to and include at least provisions on mechanical ventilation.

(5) Participants must wear a mask. If the minimum distance according to subsection 3, sentences 1 and 2 is not upheld and not all visitors present have tested negative, masks must be worn at the assigned seats. The participants' attendance shall be documented.

(6) Burials and funeral services in cemeteries or at funeral homes shall not be subject to the maximum number of persons according to subsection 2. By way of derogation from subsection 2, funerals and celebrations on the occasion of a funeral as well as private events and events with family, acquaintances or friends, in particular wedding celebrations, birthday celebrations, graduation celebrations or celebrations on the occasion of religious festivals which are not covered by sentence 1 are permitted outdoors with up to 100 persons present at the same time and in enclosed spaces with up to 50 persons present at the same time. The persons required for conducting the respective celebration as well as the group of persons according to § 8(1) and children under 14 years of age shall not be taken into account in the calculating the number of persons present according to sentence 2. Subsection 5 shall apply only if more than 20 persons are present at the same time. This subsection shall not apply if the respective event is being carried out commercially.

(7) Singing together in enclosed spaces shall only be permitted if the hygiene and infection protection standards laid down in a general hygiene policy according to § 5(2) or a legal ordinance from the Senate Department responsible for culture issued based on § 39 are observed. Sentence 1 shall not apply to singing with immediate family members.

(8) Only persons who have tested negative may participate in events in enclosed spaces. The same shall apply to events outdoors with more than 100 persons present at the same time.

(9) Events may take place under 2G conditions, in which case subsection 3, sentences 1 and 2; subsection 5, sentences 1 and 2; subsection 7 and § 1(2) shall not apply.

Persons who give artistic presentations at events or who otherwise provide contributions that are essential to the event and who cannot be replaced by other persons, do not need to fall under § 8(1) numbers 1 to 3 if they have tested negative with a PCR test. Events that take place based on legal regulations, that serve as way to exercise legally prescribed rights of participation or that are required by civil service or labour law may not take place under 2G conditions.

§ 12 **Special events**

(1) Religious and ideological communities must have established a protection and hygiene concept for holding religious and ritual events within the meaning of Article 4 of the Basic Law and Article 29(1) of the Berlin Constitution, and this concept must correspond to the current general hygiene policy of the Senate Department responsible for culture or go beyond its provisions. Participants at religious and ritual events must wear a mask unless they remain in their assigned seat. § 11(8) shall not apply.

(2) The respective institutions shall regulate their protection and hygiene measures on their own responsibility for events, including meetings, of the European Parliament and its groups and committees, the German Bundestag and its groups and committees, the Bundesrat and its committees, the House of Representatives and its groups and committees, the European Council, the Council of the European Union, the European Commission, the Federal Government, the Senate of Berlin, the Council of Mayors and its committees, the Berlin Constitutional Court, the borough assemblies and their groups and committees or those of foreign diplomatic missions, the judicial organs, the organs, bodies and authorities of the European Union, of international organisations, of the Federal Government and the Länder, and of other such bodies and institutions who carry out public legal tasks.

§ 13 **Political party meetings**

The provisions of § 11(3), (5), (7) and (8) sentences 1 and 2, shall apply to party meetings and meetings of voters' associations held on the basis of the Political Parties Act (*Parteiengesetz*) in the version of January 31, 1994 (BGBl. I, p. 149), as last amended by Article 13 of the Ordinance of June 19, 2020 (BGBl. I, p. 1328), as amended, or in preparation for participation in general elections.

§ 14 **Assemblies**

(1) When holding assemblies within the meaning of Article 8 of the Basic Law and Article 26 of the Berlin Constitution, the minimum distance of 1.5 metres between participants who are not immediate family members must always be observed. The person

organising the assembly must draw up an individual protection and hygiene plan, which must specify the measures to be taken to ensure the minimum distance and hygiene rules are observed, such as wearing a medical face mask, if applicable, or the prohibition of participants chanting together during the assembly, and to ensure the number of participants permitted according to the usable area of the place of assembly when the meeting is held is not exceeded. The assembly authority may demand the presentation of this protection and hygiene plan from the person organising the assembly and obtain an evaluation of the plan in terms of infection protection from the responsible public health office. When carrying out the assembly, the organiser must ensure that the protection and hygiene plan is followed.

(2) Participants in outdoor assemblies in accordance with Article 8 of the Basic Law and Article 26 of the Berlin Constitution must wear a mask. If the assembly is carried out as a march that only uses motor vehicles, § 10(3) number 2 applies *mutatis mutandis*. § 19(1) number 1 of the Berlin Freedom of Assembly Act (*Versammlungsfreiheitsgesetz*) of February 23, 2021 (GVBl. p. 180), does not prevent the wearing of a medical face mask to protect against infection.

(3) Only persons who have tested negative may participate in assemblies in enclosed spaces. Participants must wear a mask unless they remain in their assigned seat.

(4) Events in enclosed spaces may take place under 2G conditions, in which case subsection 1 sentence 1, subsection 3 and § 1(2) shall not apply.

§ 14a

Elections and votes

(1) For the act of voting and calculating and determining the election results for the elections for the German Bundestag, Berlin's House of Representatives, the borough assemblies (BVV) or the referendum on September 26, 2021, solely the following subsections shall apply regarding infection protection.

(2) In election rooms, their access points, waiting areas and queues, masks are required; § 2(1) and (2) shall apply *mutatis mutandis*. The requirement to wear masks shall not apply to election assistants who are part of the group of people in § 8(1) numbers 1 to 3 and who can show proof of this to the election board:

1. during the act of voting if they are protected by appropriate protective measures or protective equipment to minimise the spread of contagious droplets (especially plexiglass barriers) and
2. when calculating the election results.

In individual absentee ballot locations in which there is a reduced risk of infection due to the spatial conditions, then with the approval of the public health office, the boroughs may decide that persons who have tested negative as described in § 6 may have their mask requirement waived as long as they are at their assigned seat.

- (3) In the election room, the number of election observers permitted at the same time is restricted to the number that can be present while still ensuring the minimum distance according to § 1(2) sentence 1 can be maintained to other persons present. If more election observers than the number permitted by sentence 1 wish to have access, the election board shall decide on a regulation that takes into account everyone interested, if necessary for limited time periods; this decision shall be based on § 31 of the Federal Election Act (*Bundeswahlgesetz*) of July 23, 1993 (BGBl. I p. 1288, 1594), last amended by Article 2 of the Act of June 3, 2021 (BGBl. I p. 1482), and § 55 of the Federal Election Regulations (*Bundeswahlordnung*) in the version published on April 19, 2002 (BGBl. I p. 1376), last amended by Article 10 of the Ordinance of June 19, 2020 (BGBl. I p. 1328).
- (4) Waiting queues shall be formed outside of the election room. In the access paths to the election room and in the waiting areas, the minimum distance requirement according to § 1(2) sentence 1 shall apply.
- (5) The requirement to isolate according to § 7 or measures for isolation required by the responsible public health authority shall remain unaffected and also apply to going to a polling station.
- (6) Measures to ensure this Ordinance is upheld in the election rooms may be taken by the responsible authorities only with the approval of the election board.

Part 2 Businesses

§ 15 Obligation to wear a mask

- (1) Staff and customers in retail shops of all kinds and shopping centres (malls), in handicraft, service and other commercial enterprises with public contact, as well as staff in restaurants with guest contact and guests in restaurants must wear a mask.
- (2) Persons at markets and in outdoor queues must wear a mask.

§ 16 Retail shops, markets

(1) When opening sales outlets within the meaning of the Berlin Shop Opening Act (*Berliner Ladenöffnungsgesetz*) of November 14, 2006 (GVBl. p. 1045), last amended by the Act of October 13, 2010 (GVBl. p. 467), department stores and shopping centres (malls), the provisions on controlling access shall be observed.

(2) Masks are required at fairs, Christmas markets and public festivals.

(3) Christmas markets may open under 2G conditions; in this case, subsection 2 and § 1(2) shall not apply.

§ 17 Services

(1) In personal care service industries such as hairdressers, beauty parlours, massage parlours, tattoo parlours and similar establishments as well as tanning studios, staff must wear a medical face mask and customers must wear an FFP2 mask when services are used. Services may be offered under 2G conditions, in which case sentence 1 and § 1(2) shall not apply. Personal care services may only be used by persons who have tested negative.

(2) Subsection 1, sentence 3 shall not apply to medically necessary treatments, in particular physiotherapy, occupational therapy, logotherapy, podiatry, chiropody and treatment by alternative practitioners.

(3) When supplying fee-based sexual services, practices carried out close to the face are not permitted. The provision of sexual services in prostitution vehicles as described in the Prostitute Protection Act is not permissible. Organising or holding prostitution events as defined by the Prostitute Protection Act is prohibited. Offering services pursuant to sentences 1 is only permitted by appointment and exclusively to individual persons. Sexual services may only be used by persons who have tested negative. When staying in prostitution establishments and providing sexual services, staff and persons using sexual services must wear an FFP2 mask. Sexual services may be provided under 2G conditions, in which case sentences 1, 2 and 6 shall not apply. The organisation and carrying out of prostitution events are only permissible under 2G conditions; sentence 7 shall apply *mutatis mutandis*.

(4) The presence of clients using services described in subsections 1 and 3 shall be documented.

§ 18 Gastronomy

(1) Enclosed spaces of restaurants within the meaning of the Restaurant Act (*Gaststättengesetz*, GastG) in the version published on November 20, 1998 (BGBl. I, p. 3418), last amended by Article 14 of the Act from March 10, 2017 (BGBl. I, p. 420), as amended, and canteens may only be used by guests who have tested negative; this does not apply if the guest only goes inside to use sanitary facilities, and for canteens not for the employees who are served by the canteen. To ensure the obligation in sentence 1 is upheld, those responsible must check the proof as stated in § 6(1) or § 8(1) and refuse entry to persons who cannot show this proof. Food and beverages may only be consumed at the table.

(2) The seating and arrangement of tables in restaurants and canteens shall be carried out in such a way that a minimum distance of 1.5 metres is maintained between persons who are not immediate family members. No persons are allowed to stay within the minimum distance area. An enhanced cleaning and disinfection schedule must be ensured. For each group of seats or tables, the contact restrictions for outdoor public spaces according to § 9 apply. By way of derogation from § 1(2) sentence 1, the minimum distance may be waived within the seat or table group.

(3) Opening enclosed rooms in restaurants according to sentence 1 is only permitted if the provisions of a general hygiene policy according to § 5(2) from the Senate Department responsible for business is adhered to and this includes at least provisions on airing out the rooms. The presence of guests in restaurants and canteens shall be documented, unless they are only picking up food or beverages.

(5) Restaurants may open under 2G conditions, in which case subsection 1, sentence 3; subsection 2 with the exception of sentences 3 and 5; § 1(2) and § 15 shall not apply.

§ 19

Tourist offers, accommodation

(1) If excursions within the meaning of § 48 of the Public Transport Act (*Personenbeförderungsgesetz*) in the version published in August 8, 1990 (BGBl. I, p. 1690), last amended by Article 1 of the Act from April 16, 2021 (BGBl. I, p. 822), as amended, city sightseeing tours, boat excursions and similar offers for tourist purposes take place in enclosed spaces, then only persons who have tested negative may participate. The obligation under § 15(1) for customers shall apply only if they are not at their place. Offers can be provided under 2G conditions, in which case sentence 2; § 1(2) and § 15 shall not apply.

(2) Overnight stays in hotels, tourist accommodation, holiday homes and similar facilities may be offered by the operators of such facilities if the provisions of a general hygiene policy according to § 5(2) from the Senate Department responsible for business are adhered to and these include at least provisions on airing out the rooms. Only

persons who have tested negative on the day of arrival may be given accommodation, and in addition they must show proof of a negative test every three days during their stay. By way of derogation from § 18(1), food and beverages may be served to persons who are staying overnight without the persons needing to test negative. Offers according to sentence 1 may take place under 2G conditions, in which case § 1(2) and § 15 shall not apply.

(3) The presence of participants at the offers according to subsection 1 and guests in facilities according to subsection 2 shall be documented.

Part 3 Working life

§ 20 Federal legal requirements

The provisions in this Part supplement the federal regulations on occupational health and safety and infection control in the workplace.

§ 21 Obligation to wear a mask in office and administrative buildings

In office and administrative buildings, employees and visitors must wear a mask unless they are in an assigned place or can maintain the minimum distance of 1.5 metres.

§ 22 Obligation to offer testing

(1) Private and public employers, including employers in the judicial system, are required to offer their employees who work at least part of the time at their workstation on-site a free test twice per week for an infection with the SARS-CoV-2 coronavirus using a point-of-care (PoC) antigen test, and these tests must be organised by the employer. The requirement according to sentence 1 can be fulfilled by providing the employees with point-of-care (PoC) antigen self-tests. If employees take part in public testing offers according to § 4a of the Coronavirus Test Ordinance (*Coronavirus-Testverordnung*) from March 8, 2021 (BAnz AT 09.03.2021 V 1), amended by Article 1 of the Ordinance from May 4, 2021 (BAnz AT 04.05.2021 V1), as amended, this does not release employers from their obligation according to sentence 1. Subject to sentence 5, employers are required to issue a certificate of the test result or have such a certificate issued. A certificate of the result of a point-of-care (PoC) antigen self-test is only to be issued if the self-test was carried out under supervision; § 6(2) shall apply *mutatis mutandis*.

(2) Employees who typically have physical contact with customers or other third parties as part of their tasks and those who work as functional staff with contact with the public as part of events described in § 11, are required to take part in the offer described in subsection 1; this requirement can be fulfilled using point-of-care (PoC) antigen self-tests only if the self-test is carried out under supervision.

(3) Self-employed persons who have physical contact with customers or other third parties as part of their professional activities and those who work as functional staff with contact with the public as part of events described in § 11 are required to be tested twice per week for an infection with the SARS-CoV-2 coronavirus using a point-of-care (PoC) antigen test and to retain the proof of the test results for four weeks and, upon request, to allow the responsible authority access to the proof to check whether the aforementioned obligations are being fulfilled.

(4) Subsections 1 to 3 shall only apply if sufficient tests are available and can be reasonably procured.

§ 23

Meetings for employee representation; works council and staff meetings

(1) The applicable protective and hygiene measures are regulated during the regular sessions of the elected employee representations on their own responsibility on the basis of the Works Constitution Act (*Betriebsverfassungsgesetz*) in the version published on September 25, 2001 (BGBl. I p. 2518), as last amended by Article 4 of the Act of July 16, 2021 (BGBl. I p. 2959), as amended, the Federal Staff Representation Act (*Bundespersönalvertretungsgesetz*) of June 9, 2021 (BGBl. I p. 1614), or the Staff Representation Act (*Persönalvertretungsgesetz*) in the version from July 14, 1994 (GVBl. p. 337; 1995, p. 24), last amended by Article 11 of the Act of July 5, 2021 (GVBl. p. 842), as amended.

(2) For operational and staff meetings and other events that arise from the Works Constitution Act, Federal Staff Representation Act and Staff Representation Act and do not fall under subsection 1, the regulations in § 11 shall apply.

Part 4 Education

§ 24 Day care for children

In day care facilities, regular operations will take place, taking into account the requirements resulting from the Covid 19 pandemic. Taking into account the infection situation, the Senate Department responsible for youth and family affairs may set down

further provisions, also with regard to other areas of child and youth welfare, in particular pertaining to the hygiene requirements to be observed.

§ 25 Schools

The Senate Department responsible for education shall determine the requirements for operating public and independent schools, including second chance schools and the provision of extra-curricular and supplementary support and care, by legal ordinance issued based on § 39.

§ 26 Universities

(1) To ensure that courses can be taught face-to-face, state, private and denominational universities are to include as part of their protection and hygiene concepts testing of students for an infection with the coronavirus SARS-CoV-2 if students are present at the universities, in particular in order to participate in courses, practical formats and on-campus examinations. Students who participate in face-to-face formats or on-campus examinations on several days of the week must provide evidence of two negative test results taken on non-sequential days in order to participate in these formats; if they participate in only one face-to-face format per week, they only need to show proof of one negative test result.

In courses and practical formats carried out face-to-face, the maximum number of participating students shall be based on the hygiene policies of the universities. The attendance of students and teachers at face-to-face events must be documented.

(2) University libraries may offer open workstations and computer pools only to persons who have tested negative, provided that admission is by appointment only or with attendance documentation.

(3) § 11(5) sentences 1 and 2 shall apply *mutatis mutandis* with the condition that the participants according to subsection 1 have tested negative.

(4) For canteens of the Student Services organisations (*Studierendenwerk*), the provisions for gastronomy and canteens according to § 18 apply *mutatis mutandis*.

§ 27 Other educational institutions

(1) In *Volkshochschulen* and other adult education centres, music schools, youth art schools, youth traffic schools, gardening schools as well as independent institutions within the meaning of the Schools Act and similar education institutions, masks must

be worn in enclosed spaces. The requirement to wear a medical mask shall not apply if all participants stay at the place they have been assigned and it is ensured that the minimum distance is maintained between all places.

(2) Persons employed in teaching, supervision and examinations at the institutions listed in subsection 1 must show proof of a negative test result twice a week, but if they only perform these tasks on one day a week, then only one negative test is required on the day the task is performed. § 11(8) shall apply to participation in teaching, supervision and examinations according to subsection 1, under the condition that if participation in teaching, supervision and examinations takes place more than twice a week, only two negative test results on non-consecutive days have to be proven. A test obligation is waived for all offers held outdoors.

(3) In addition, offers at the educational institutions referred to in subsection 1 which involve sport activities, physically strenuous exercise and direct physical contact shall only be permissible in compliance with the provisions of §§ 30 to 32.

(4) Only clients who have tested negative may use the services of driving schools, boating schools, flying schools and similar institutions.

§ 28

Vocational training

(1) In vocational training, a mask must be worn in enclosed spaces. The requirement to wear a mask does not apply as long as all participants remain at their assigned places and it is ensured that the minimum distance is maintained between all places.

(2) Persons engaged in vocational training under subsection 1 shall provide evidence of a negative test result twice a week. If the activity takes place on only one day of the week, only one negative test result on the day of the activity must be proven. § 11(8) shall apply to participation in teaching and examinations or other events in vocational training according to subsection 1, under the condition that, if participation takes place more than twice in each calendar week, only two negative test results on non-consecutive days have to be proven. A test obligation is waived for all offers outdoors.

(3) Subsections 1 and 2 shall apply mutatis mutandis to measures to promote integration into the labour market.

Part 5

Culture

§ 29

Cultural institutions

(1) Cinemas, theatres, opera houses, concert halls and other publicly and privately owned cultural institutions and event venues may be opened to the public in accordance with the provisions of § 11.

(2) When opening museums, galleries and memorials as well as libraries and archives, access limitation provisions must be observed.

(3) Visitors to institutions and sites referred to in subsections 1 and 2 must wear a mask. The requirement according to sentence 1 shall not apply outdoors if the minimum distance can be maintained safely at all times.

(4) Institutions and sites according to subsections 1 and 2 may open under 2G conditions, in which case subsection 3 shall not apply; in all other respects, § 11(9) shall apply. For institutions and sites according to subsection 2, access limitation shall then also not be necessary.

(5) The presence of visitors to institutions in accordance with subsection 1 shall be documented if the visitors also use enclosed spaces.

(6) Offers related to cultural or historical-political education in cultural institutions may take place in person in accordance with the provisions in § 11.

Part 6 Sport and leisure

§ 30 General regulations for practicing sports

(1) Outdoor sports are permitted even if the minimum distance according to § 1(2) cannot be maintained.

(2) Basic regulations governing sport at public schools and independent schools, at vocational training institutions and as a study-related subject taught at universities and as professionally required sport at state institutions shall take precedence over this Part 6.

§ 31 Covered sports facilities, gyms, dance studios and similar facilities

(1) Practicing sports in covered sports facilities, gyms, dance studios and similar facilities shall be permitted if all those present have tested negative. It is permissible to be closer than the minimum distance according to § 1(2).

(2) Fitness and dance studios and similar facilities may only be opened for use if the hygiene and protection standards set down in the provisions of a general hygiene policy from the Senate Departments responsible for sport and for business are observed. The general hygiene policy according to sentence 1 must at least include provisions on the maximum number of persons permitted, testing obligations, obligations to book appointments and on airing out the rooms.

(3) The obligation to test according to subsection 1 sentence 1 shall not apply to

1. immediate family members if no other persons are involved,
2. federal and state cadre athletes, professional leagues and professional sportsmen and sportswomen,
3. medically prescribed rehabilitation sport or medically prescribed functional training within the meaning of § 64(1) numbers 3 and 4 of Book Nine of the Social Code (*Sozialgesetzbuch*) of December 23, 2016 (BGBl. I, p. 3234), as last amended by Article 4 of the Act of June 3, 2021 (BGBl. I, p. 1444), as amended, in fixed groups of up to ten persons plus one person in charge of the exercise; in cases of particular hardship to be justified in the individual case, the participation of further persons is permitted if this is absolutely necessary to enable the participants to participate in rehabilitation sport or functional training,
4. children up to and including 14 years of age, if the sport is practised in fixed groups of a maximum of 20 persons present plus one caregiver; the caregiver must be tested negative, the testing must have been carried out within the past 24 hours, but testing shall be required no more than twice a week.

(4) A medical face mask must be worn in covered sports facilities, gyms, dance studios and similar facilities, except during sports practice. The presence of those using the facilities in accordance with subsections 1 and 2 must be documented.

§ 32 Swimming pools

(1) Beach pools, outdoor swimming pools and indoor swimming pools may be opened after obtaining approval from the local public health office. The approval should be based on a use and hygiene concept submitted by the respective operator, and this concept must in particular ensure that the minimum distance requirement according to § 1(2) sentence 1 is observed. If pools are leased to third parties or provided for priority use, these third parties are operators in the sense of the above provision.

(2) For the use of indoor swimming pools, § 31(1) sentence 1 and § 31(3) and (4) shall apply mutatis mutandis. The obligation to test under § 31(1) sentence 1 shall not apply to therapeutic treatments beyond § 31(3).

§ 33
Sport competitions

(1) Professional sport competitions are permitted, provided that they take place within the framework of a usage and hygiene concept made by the respective sports association. All persons involved in the operation of competitions in covered sporting facilities, fitness and dance studios and similar facilities must have tested negative and show proof of this before entering the sporting facility. For outdoor sport competitions, sentence 2 shall apply if more than 100 persons are present. In all other respects, the provisions of § 11 shall apply.

(2) Subsection 1 shall apply mutatis mutandis to non-professional sport competitions.

§ 33a
2G conditions in sport

The use of covered and uncovered sport facilities, fitness and dance studios and similar institutions or swimming pools including for the purpose of carrying out sport competitions according to § 33 may take place under 2G conditions, in which case § 1(2) and § 31(4) sentence 1 shall not apply. Persons who take part in the sport competitions do not have to fall under § 8(1) numbers 1 to 3 if they have tested negative with a PCR test.

§ 34
Recreational facilities

(1) Dance clubs and similar businesses within the meaning of the Trade Regulation Act (*Gewerbeordnung*) in the version published on February 22, 1999 (BGBl. I, p. 202), last amended by Article 2 of the Act from August 10, 2021 (BGBl. I, p. 3504), as amended, can be opened to the public if the spaces are enclosed only if the 2G condition as described in § 8a(2) applies. Outdoor dance parties may only be attended by persons who have tested negative. In all other respects, the provisions of § 11 shall apply; § 1(2) shall not apply.

(2) Saunas, thermal baths and similar facilities may only be visited by persons who have tested negative. The access control provisions must be observed. Producing vapours (e.g., by pouring water on the rocks in the sauna) is prohibited. Saunas and steam baths must remain closed. Sentences 3 and 4 shall not apply if the 2G condition as described in § 8a(2) applies. Sentences 1 to 5 also apply to corresponding areas in tourist accommodations and similar establishments.

(3) Enclosed spaces at amusement venues as detailed in the Building Utilisation Ordinance (*Baunutzungsverordnung*) in the version published on November 21, 2017

(BGBl. I, p. 3786), amusement parks and businesses for leisure time activities as well as amusement arcades, casinos, betting shops and similar establishments may only be visited by persons who have tested negative. The access control regulations must be observed.

(4) The Zoological Garden Berlin, including the Aquarium, the Tierpark Berlin Friedrichsfelde and the Botanical Garden Berlin may be opened subject to compliance with the access control regulations.

(5) Visitors to facilities and sites referred to in subsections 2 to 4 must wear a mask. The obligation according to sentence 1 does not apply as long as visitors stay at their places and during the use of swimming pools and saunas. With regard to the facilities and sites referred to in subsection 4, the obligation pursuant to sentence 1 shall not apply outdoors if the minimum distance can be safely maintained at all times. Facilities and sites according to subsections 2 to 4 may open under 2G conditions, in which case sentences 1 and 2, subsection 2 sentence 2, subsection 3 sentences 1 and 2 as well as § 1(2) shall not apply.

(6) The presence of visitors in the facilities and sites referred to in subsections 1 to 3 shall be documented if they also include enclosed spaces.

Part 7

Health, nursing care and social affairs

§ 35

Health care facilities, hospitals

(1) Visitors in hospitals must have tested negative; this does not apply for visiting the seriously ill or dying, whereby all protective measures to protect the other patients, visitors and staff must be taken. In hospitals, visitors must wear an FFP2 mask; the same applies to patients if they are outside of their room or receiving visitors. Staff in hospitals must wear an FFP2 mask when directly caring for vulnerable patient groups. Staff in doctors' practices and other health care facilities must wear a medical face mask. Patients and those accompanying them in doctors' practices and other health care institutions must wear an FFP2 mask. Sentences 2 to 4 shall not apply if the medical treatment in question precludes the wearing of a mask.

(2) Accredited hospitals may carry out planned admissions, operations and treatments provided that reservation and availability requirements are met and that the return to a crisis mode can be implemented at short notice at any time if the pandemic situation intensifies.

(3) The Senate Department responsible for the hospital sector shall determine the specifications for hospitals by legal ordinance in accordance with § 39.

§ 36
Nursing care

Visitors to nursing facilities must have tested negative; this shall not apply for visiting the seriously ill or dying, whereby all protective measures to protect the other patients, visitors and staff must be taken. The Senate Department responsible for nursing care shall determine additional specifications for inpatient and day care facilities, nursing care services and outpatient assisted living care communities by legal ordinance in accordance with § 39.

§ 37
Integration assistance, social assistance, assistance for the homeless

(1) Service providers with agreements based on § 123 of Book Nine of the Social Code or § 75 of Book Twelve of the Social Code - Social Assistance - (Article 1 of the Act from December 27, 2003, BGBl. I, p. 3022, 3023), last amended by Article 1 of the Act from June 2, 2021 (BGBl. I, p. 1387), as amended, are authorised to occupy their personnel with tasks others than those described in the service agreement, in order to mitigate dangers to staff and those receiving services as long as the tasks are related to the content of their services. It must be ensured that all persons receiving services are given basic, essential care and supplies.

(2) Visitors to facilities operated by service providers with agreements based on § 123 of Book Nine of the Social Code must have tested negative.

(3) The daytime and overnight assistance programmes for homeless persons shall remain open to ensure adequate care for those affected.

Article 3
Authorisation to issue ordinances; transitional and final provisions

§ 38
Large events and experimentation clause

(1) The Senate Department responsible for the matter in agreement with the Senate Department responsible for health shall decide on the approval of events with more than 2000 persons present at the same time. The agreement shall be considered to have given if the Senate Department responsible for health does not state its objection to the Senate Department responsible for the matter within 14 days of receiving the request for agreement. The approval may be restricted to certain event forms and individual event locations.

- (2) For events at locations that had a maximum capacity as of March 13, 2020, the approval based on subsection 1 for events with more than 2000 persons present at the same time may include a maximum of 50% of that maximum capacity.
- (3) Events with more than 2000 persons present at the same time that take place under 2G conditions, there is no maximum number of participants. Approval is granted by the Senate Department responsible for the respective issue. Subsection 1 sentence 3 shall apply mutatis mutandis.
- (4) The Senate Department responsible for the respective issue may permit exceptions from the provisions of this Ordinance beyond those in subsection 1 in agreement with the Senate Department responsible for health in justified individual cases. The criteria that must be met as a minimum for the approval of an application in accordance with sentence 1 may be defined by the respective competent Senate Department in a sector-specific general hygiene policy.

§ 39

Authorisation to issue ordinances

(1) According to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act, the responsible Senate Department for the respective matter shall also be authorised, in agreement with the Senate Department responsible for health, to issue legal ordinances for the following purposes:

1. to set down provisions according to § 5(2),
2. to regulate exceptions to the requirement to maintain a minimum distance of 1.5 metres beyond those in § 1(2) sentence 2,
3. to determine situations beyond Article 2 in which there is an obligation to wear a medical face mask, an FFP2 mask or a mouth-and-nose covering,
4. to regulate exceptions to the obligation to wear a medical face mask or an FFP2 mask that go beyond § 2(2) and
5. to determine sector-specific regulations for the maintenance of attendance documentation in addition to § 4(1) sentence 1, in particular also additional requirements for documenting attendance beyond those described in Article 2.

(2) The Senate Department responsible for education is authorised, in agreement with the Senate Department responsible for health, to extend by ordinance, in accordance with § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and the first sentence of § 32 sentence 1 of the Protection against Infection Act, the obligation to wear a medical face mask, which may also include areas outside enclosed spaces and regulations for mask requirements for children under 6 years of age while attending school. It is further authorised, in agreement with the Senate Department responsible for health and in accordance with the § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act, to issue ordinances to impose conditions on the continued operation of schools as

well as childcare facilities and day care services for children and other child and youth welfare facilities or to order their closure; this shall be without prejudice to § 22(2) and the possibility of general requirements on another legal basis for the purpose of containing the Covid-19 pandemic, such as, in particular, under § 45 of the Eighth Book of the Social Code.

(3) The responsible Senate Department for health is authorised to regulate details on the requirements in § 35(3) as to the conditions under which planned admissions, operations and treatments may be carried out in accredited hospitals, by way of legal ordinances according to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act. It is also authorised to use legal ordinances according to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act to establish conditions and requirements, especially hygiene requirements, for hospitals as well as regulations on entering or visiting health care facilities, especially hospitals.

(4) The Senate Department responsible for nursing care is authorised to set down conditions and requirements, especially hygiene requirements, for nursing care facilities as well as regulations on entering or visiting nursing care facilities by legal ordinance according to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act. The aim should be to achieve a very high vaccination rate. Ordinances issued according to sentence 1 may permit exceptions to the provisions in § 8 relating to exemptions from the requirement to accept a test offer as well as § 10, § 11, § 30 and § 31.

(5) The Senate Department responsible for social matters is authorised, in the field of integration assistance and social assistance, to use legal ordinances in accordance with § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act to ensure basic provision for those entitled to benefits.

(6) The Senate Department responsible for culture is authorised, in agreement with the Senate Department responsible for health, by way legal ordinances according to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act, to regulate hygiene and infection protection standards for singing in enclosed rooms.

(7) The Senate Department responsible for labour is authorised, in agreement with the Senate Department responsible for health, by way legal ordinances according to § 2 sentence 1 of the Berlin COVID-19 Parliamentary Participation Act and § 32 sentence 1 of the Protection against Infection Act, to regulate the following:

1. measures for hygiene and infection protection at workplaces, in work rooms and workstations as referred to in § 2(1), (3) and (4) of the Workplace Ordinance (*Arbeitsstättenverordnung*),
2. more information on the exceptions according to § 17(2).

§ 40

Restriction of fundamental rights

This Ordinance restricts the fundamental rights of the freedom of the person (Article 2(2) sentence 2 of the Basic Law), the freedom of assembly (Article 8(1) of the Basic Law), the freedom of movement (Article 11(1) of the Basic Law) and the inviolability of the home (Article 13 of the Basic Law).

§ 41

Administrative Offences

(1) The prosecution of administrative offences shall be governed by § 73(1a) number 24 and subsection 2 of the Protection against Infection Act and the Act on Administrative Offences (*Gesetz über Ordnungswidrigkeiten*) in the version promulgated on February 19, 1987 (BGBl. I p. 602), last amended by Article 9a of the Act of March 30, 2021 (BGBl. I p. 448), as amended.

(2) Administrative offences may be punished by a fine of up to EUR 25,000 pursuant to the second half-sentence of § 73(2) of the Protection against Infection Act.

(3) It is an administrative offence within the meaning of § 73(1a) number 24 of the Protection against Infection Act to deliberately or negligently,

1. in violation of § 2(1) sentence 1, not wear a medical face mask or FFP2 mask and no exception under subsection 1, sentence 2; subsection 2; § 11(9) sentence 1; § 12(1); § 14(3) and (4); § 14a(s) sentence 3; § 17(1) sentence 2; § 17(3) sentence 7; § 18(4); § 19(1) sentence 3; § 21; § 27(1); § 28(1); § 29(3) sentence 2; § 29(4) sentence 1; § 34(5) sentences 2 to 4; or § 35(1) sentence 6 applies,
2. in violation of § 4(5), give incomplete or inaccurate information, unless an exception under § 4(5) sentence 4 applies,
3. in violation of § 5(1) sentence 1, not create an individual protection and hygiene concept,
4. in violation of § 5(1) sentence 1, not present an individual protection and hygiene concept to the responsible authority upon request,
5. in violation of § 5(1) sentence 1, not ensure the protection measures set down in the protection and hygiene concept are adhered to,
6. in violation of § 7(1) sentence 1 or § 7(3) sentence 2, not immediately arrange for a PCR test,

7. in violation of § 7(1) sentence 1, not immediately and directly go to the primary or secondary residence or other accommodation suitable for isolation after becoming aware of the positive result of a test, unless an exception under § 7(1) sentence 1 applies,
8. in violation of § 7(1) sentence 1, not isolate at all times for a period of 14 days until the result of a test using nucleic acid for the coronavirus SARS-CoV-2 is received, unless an exception under § 7(1) sentence 2 applies,
9. (repealed)
10. in violation of § 7(2), not immediately and directly go to the primary or secondary residence or other accommodation suitable for isolation after becoming aware of the positive result of a test,
11. in violation of § 7(4), receive visitors who do not belong to the person's own household,
- 11a. in violation of § 8a(2), as the responsible person, not ensure that only persons who fall under § 8(1) numbers 1 to 3 are granted entry and no exception according to § 8a(2) number 1 applies, not ensure that only persons who fall under § 8(1) numbers 1 to 3 are used as staff who comes into direct contact with clients or audience members, or are present in the areas of the establishment or event rooms in which the 2G condition applies, not check proof, not refuse entry to a person who does not provide proof or not inform about the applicability of the 2G condition in an appropriate manner, unless an exception under § 8a(2) numbers 2 or 3, § 11(9) sentence 2 or § 33a sentence 2 applies,
12. in violation of § 9(1), gather with persons other than those named, unless an exception under § 9(3) applies,
13. in violation of § 10(1), consume alcoholic beverages in public parks,
14. in violation of § 10(2), not wear an FFP2 mask, unless an exception under § 2(2) applies,
15. in violation of § 10(3), not wear a medical face mask, unless an exception under § 2(2) applies,
16. in violation of § 11(2) sentence 1, as the person responsible for an outdoor event, not guarantee compliance with the maximum number of participants permitted and no exception under § 6 sentence 1, § 12 or § 23 applies,
17. in violation of § 11(2) sentence 2 or § 11(4), as the person responsible for an event in enclosed spaces, not guarantee compliance with the maximum number of participants permitted and no exception under § 11(4), § 11(6) sentence 1, § 12 or § 23 applies, or in the case of § 11(4) not comply with the provisions of the general hygiene policy from the responsible Senate Department,
18. in violation of § 11(3), as the responsible organiser of an event, not ensure compliance with the rules on hygiene and distance,
19. in violation of § 11(5) sentence 3, § 17(4), § 19(3), § 29(5), § 31(4) sentence 2 or § 34(6), each in conjunction with § 4(1) to (4), as the responsible person, not keep attendance documentation, not maintain it fully, not keep it or save it for a period of two weeks, not hand it over, make it accessible, or otherwise provide it at the request of the competent authority, not delete or destroy it after the retention period

- is over or not deny access or permission to remain to persons who have given incomplete or manifestly incorrect information, not check the test certificate or proof of vaccinated or recovered status, not check the identity of the person presenting the certificate or not ensure that the digital applications are used properly unless an exception under § 4(1) number 7 or § 4(3) sentence 3 applies,
20. in violation of § 11(6) sentence 2, as the person responsible for a funeral or celebration events related to a funeral or private events including wedding celebrations, birthday celebrations or celebrations of religious festivals, not guarantee compliance with the number of participants permitted and no exception under subsection 6, sentence 4 applies,
 21. in violation of § 11(7), sing together in enclosed spaces without complying with the standards of hygiene and protection against infection laid down in a general hygiene policy or in a legal ordinance from the Senate Department responsible for culture, and no exception under § 11(7) sentence 2 applies,
 22. in violation of § 11(8), participate in an event in enclosed rooms without having tested negative or participate in an outdoor event with more than the named number of persons present at the same time without having tested negative,
 23. in violation of § 14(1) sentence 1, not maintain a minimum distance of 1.5 metres to other participants who are not immediate family members,
 24. in violation of § 14(1) sentences 2 and 3, as the person organising the assembly, not draw up a protection and hygiene plan or not submit this to the assembly authority at the authority's request,
 25. in violation of § 14(1) sentence 4, as the person organising the assembly, not ensure compliance with the protection and hygiene plan when holding the assembly,
 26. in violation of § 14(3) sentence 1, participate in an assembly in an enclosed room without having tested negative,
 27. in violation of § 16(1), as the responsible of a sales outlet, a department store or a shopping centre (mall), not observe the regulations on access control according to § 3,
 28. in violation of § 17(1) sentence 1, as a customer of a personal hygiene service business, not wear an FFP2 mask and no exception under § 17(1) sentence 2, § 17(2) or § 2(2) applies,
 29. in violation of § 17(1) sentence 1, as a staff member of a personal hygiene service business, not wear a medical mask and no exception under § 17(1) sentence 2, § 17(2) or § 2(2) applies,
 30. in violation of § 17(1), sentence 3, use services in the field of personal hygiene without having tested negative and no exception under § 17(2) applies,
 31. in violation of § 17(3) sentence 1, use sexual services carried out close to the face and no exception under subsection 3, sentence 7 applies,
 32. in violation of § 17(3) sentence 3, organise or carry out prostitution events and no exception under subsection 3, sentence 8 applies,
 33. in violation of § 17(3) sentence 4, as an operator of a prostitution business according, offer services according to § 17(3) sentence 1 without appointments or not offer services exclusively to individual persons,

34. in violation of § 17(3) sentence 4, make use of sexual services without having tested negative,
35. in violation of § 17(3) sentence 6, not wear an FFP2 mask, unless an exception under subsection 3, sentence 7, or under § 2(2) applies,
36. in violation of § 18(1) sentence 1, go to enclosed spaces of a restaurant without having tested negative and no exception under the second half-sentence of § 18(1) sentence 2 or § 19(2) sentence 3 applies,
37. in violation of § 18(1) sentence 2, as the responsible operator of a restaurant or canteen, not check proof or not refuse entry to a person who cannot show proof,
38. in violation of § 18(1) sentence 3, as a guest in a restaurant, consume food and beverages somewhere other than the table and no exception under subsection 4 applies,
39. in violation of § 18(2) sentence 1, as the responsible operator of a restaurant or canteen, not ensure compliance with the rules on hygiene and distance and no exception under § 18(2) sentence 5 or subsection 4 applies,
40. in violation of § 18(3) sentence 1, as the responsible operator of a restaurant, when opening enclosed spaces, not comply with the standards of hygiene and protection against infection laid down in a general hygiene policy or in a legal ordinance from the Senate Department responsible for business culture,
41. in violation of § 19(1), participate in excursions, sightseeing tours, boat trips or comparable offers that include enclosed spaces without having tested negative,
42. in violation of § 19(2), as the responsible operator of a hotel, tourist accommodation, holiday home or similar establishment, offer overnight accommodation without complying with the hygiene and infection standards laid down in the general hygiene policy or in a legal ordinance of the Senate Department responsible for business,
43. in violation of § 22(1), as an employer, not provide or organise an opportunity for testing, unless an exception under § 22(4) applies,
44. in violation of § 22(3), as a self-employed person, not carry out testing, not retain proof of testing for a period of four weeks or not make the proof of testing accessible to the responsible authority upon request, unless an exception under § 22(4) applies,
45. in violation of § 27(4), use the services of driving schools, boating schools, flight schools and similar businesses without having tested negative,
46. in violation of § 29(1), fail to comply with the requirements of § 11 when opening cinemas, theatres, opera houses, concert halls and other cultural facilities and event venues, unless an exception under § 29(4) applies,
47. in violation of § 31(1), sentence 1, or § 32(2), participate in sport in covered sports facilities, fitness and dance studios, and similar facilities or in indoor swimming pools without having tested negative and no exemption under § 31(3) or § 32(2) applies,
48. in violation of § 31(2), as the responsible operator of a covered sports facility, an indoor swimming pool, a fitness or dance studio or a similar facility, fail to comply

- with the hygiene and infection control standards laid down in a joint general hygiene policy from the Senate Departments responsible for sport and for business,
49. in violation of § 31(4), be present in covered sports facilities, indoor swimming pools, fitness and dance studios, and similar facilities without wearing a medical face mask when sport is not being practised and no exemption under § 31(4) or § 2(2) applies,
 50. in violation of § 32(1), as the responsible operator of an outdoor swimming pool or beach pool, open without the approval of the local public health office or not ensure the hygiene and minimum distance regulations are upheld,
 51. in violation of § 33(1) sentence 1 and § 33(2), conduct a competition without a usage and hygiene concept from the respective sports association, not observe the regulations in that concept or not ensure the maximum number of participants is observed,
 52. in violation of § 33(1) sentences 2 or 3 or § 33(2), participate in competitions without having tested negative,
 53. in violation of § 34(1) sentence 1, as the responsible operator, open the enclosed spaces of a dance club or similar business without adhering to the 2G condition for the public,
 - 53a. in violation of § 34(1) sentence 1, as an attendee, go to a dance club in enclosed spaces without falling under the persons described in § 8a(2) number 1,
 54. in violation of § 34(1) sentence 2, attend a dance event or a similar event outdoors without being tested negative,
 55. in violation of § 34(2) sentence 3, as the responsible operator or visitor of a sauna, thermal bath or a similar facility, create vapours (e.g., by pouring water on hot rocks) and no exception according to sentence 5 applies,
 56. in violation of § 34(2) sentence 4, as the responsible operator, open steam baths to the public and no exception according to sentence 5 applies,
 57. in violation of § 34(3) sentence 1, visit amusement facilities, amusement parks or establishments for leisure activities as well as gambling halls, casinos, betting agencies and similar establishments without having tested negative, and no exception according to subsection 5 sentence 4 applies,
 58. in violation of § 34(3) sentence 2, as the operator of amusement facilities, amusement parks or establishments for leisure activities as well as gambling halls, casinos, betting agencies and similar establishments, allow more than the maximum number of persons permitted for the sales area or business floor, and no exception according to subsection 5 sentence 4 applies,
 59. in violation of § 35(1) sentence 4, as a staff member of a doctor's practice or other health care facility, not wear a medical mask and no exception under § 35(1) sentence 6, § 35(3) or § 2(2) applies,
 60. in violation of § 35(1) sentence 5, as a patient of a doctor's practice or a person accompanying a patient, not wear an FFP2 mask and no exception under § 35(1) sentence 6, § 35(3) or § 2(2) applies.

§ 42

Entry into force, abrogation

(1) This Ordinance shall enter into force on the day following its promulgation in the Berlin Law and Ordinance Gazette. At the same time, the Second SARS-CoV-2 Infection Protection Measures Ordinance of March 4, 2021 (GVBl. p. 198), last amended by the Ordinance of June 1, 2021 (GVBl. p. 522), shall cease to have effect.

(2) This Ordinance shall expire at the end of the day on November 24, 2021.

Berlin, October 26, 2021

The Senate of Berlin

Michael Müller
Governing Mayor

Dilek Kalayci
Senator for Health,
Long-Term Care and Gender
Equality

Appendix
(to § 2(1) sentences 2 and 3)

I. Medical face mask

For the purposes of this Ordinance, a medical face mask is a protective mask made of special materials which complies with the requirements of European standard EN 14683:2019+AC:2019 (often called “surgical masks”) or which complies with the requirements of European standard EN 149:2001+A1:2009 for FFP2 masks or comparable protective standards (e.g., KN95, N95 or KF94 masks), but regardless of the type, the mask cannot have an exhalation valve.

II. FFP2 mask

For the purposes of this Ordinance, an FFP2 mask is a protective mask made of special materials which complies with the requirements of European standard EN 149:2001+A1:2009) or comparable protective standards (e.g., KN95, N95 or KF94 masks), but regardless of the type, the mask cannot have an exhalation valve. Respiratory protective masks as stated in § 28b of the Protection against Infection Act include FFP2 masks or masks of comparable protective standards (for example KN95, N95 or KF94 masks).