

**Second Ordinance on Basic Measures to Protect the Population from
Infections with the SARS-CoV-2 Coronavirus
(Second SARS-CoV-2 Basic Protective Measures Ordinance - BaSchMV)**

From September 27, 2022

in the version of the

Fourth Ordinance to Amend the

Second SARS-CoV-2 Basic Protective Measures Ordinance

From January 10, 2023

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 § 28b(2) and (3) of the Protection against Infection Act (*Infektionsschutzgesetz*) of July 20, 2000 (Federal Law Gazette (BGBl.) I, p. 1045), last amended by Article 8b of the Act of December 20, 2022 (BGBl. I, p. 2793), and § 7 of the Covid-19 Protective Measures Emergency Ordinance of May 8, 2021 (BAnz AT 08.05.2021 V1), last amended by Article 2 of the Ordinance of March 18, 2022 (BGBl. I, p. 478), the Senate hereby enacts the following:

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Article 1 Basic Protective Measures

§ 1 Medical face mask and respirator mask

(1) If this Ordinance mandates masks, a respirator mask (FFP2 or comparable) to be worn unless otherwise specified. 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.

(2) For the purposes of this Ordinance, respirator masks and medical face masks are protective masks made of special materials which meet the requirements set out in the Appendix and which must not have an exhalation valve.

(3) In cases in which this Ordinance requires a medical face mask or respirator 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 respirator 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, and
4. deaf persons and the hard of hearing as well as persons who communicate with them, as well as persons accompanying them.

§ 2 Obligation to wear a mask

- (1) Passengers are required to wear masks in local public transport vehicles; control and service personnel and driving personnel are required to wear a medical face mask if they are in physical contact with other persons due to their work.
- (2) Masks are compulsory in accommodation facilities for the homeless and facilities for common housing of asylum seekers, those obligated to leave the country under an enforceable decision, refugees or repatriates. The facilities shall regulate the details on their own responsibility.
- (3) If integration assistance services are provided in facilities pursuant to subsection 2 in accordance with Book Nine of the Social Code (*Sozialgesetzbuch*) of December 23, 2016 (BGBl. I, p. 3234), last amended by Article 13 of the Act of June 24, 2022 (BGBl. I, p. 959), residents with disabilities within these facilities shall not be required to wear masks by way of derogation from subsection 2.
- (4) Wearing a medical face mask is recommended in publicly accessible indoor spaces in which multiple people are present.

§ 3

Proof of testing

(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 by the person showing proof as described in § 22a(3) number 3 of the Protection against Infection Act.

(2) 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 six or for pupils who are subject to regular testing as part of 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; this is not the case during school holidays. 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.

§ 4

Requirements for proof of a negative test

There is an obligation to test in

prisons, detention centres for deportees, hospital treatment order facilities, and other departments or facilities where and if long-term deprivation of liberty takes place, in

particular psychiatric hospitals for prisoners, persons in preventive detention, attested persons, patients, persons being housed there, visitors, external persons and employees. Further details and exemptions from the testing obligation are regulated by the facilities and companies on their own responsibility, whereby a complete exemption from the testing obligation for vaccinated and recovered persons as described in § 2 numbers 2 and 4 of the COVID 19 Protective Measures Exemption Ordinance is not permitted. No testing obligation may be imposed on persons who enter the facility or the enterprise for an insignificant period of time as part of an emergency response or for other reasons without contact with the persons treated, cared for, nursed or accommodated in the facilities and companies referred to in sentence 1.

§ 5

Compulsory testing at schools

(1) At public schools, independent schools and institutions of the second chance schools within the meaning of the Schools Act (*Schulgesetz*) of January 26, 2004 (GVBl. p. 26), as last amended by the Act of July 5, 2022 (GVBl. p. 452), as amended (hereinafter: schools), testing shall be compulsory in accordance with the provisions of subsections 2 to 4 if the Senate Department responsible for education requires this to prevent the spread of the coronavirus SARS-CoV-2 and to ensure the functioning of the healthcare system or other critical infrastructure.

(2) If the Senate Department responsible for education requires compulsory tests according to subsection 1, pupils are only permitted to participate in face-to-face lessons, other educational events and offers, supervision offers and lunch at school if they undergo an offered test for infection with the SARS-CoV-2 coronavirus and the test result is negative or if they present proof of testing as defined in § 3(1). The Senate Department responsible for education sets the frequency of testing in line with the infection rates. The requirement according to sentence 1 shall also apply to vaccinated and recovered persons as described in § 2 numbers 2 and 4 of the COVID-19 Protective Measures Exemption Ordinance. For pupils who, due to a disability, a comparable impairment or a special educational need, are unable to self-apply a point-of-care (PoC) antigen test even under guidance, proof of the negative result of a performed point-of-care (PoC) antigen test for self-application can be provided by a self-declaration of the parent/guardian or of the pupils who have reached their majority. In particularly exceptional cases, proof in accordance with sentence 1 may be waived. The decision on the existence of the requirements according to sentence 4 as well as in the cases of sentence 5 shall be made by the school headmaster.

(3) For teachers, other members of the teaching staff and other persons working at the school, subsection 2, sentences 1 to 3 shall apply mutatis mutandis, with the proviso that a point-of-care (PoC) antigen test for self-administration outside the school and without supervision may be taken; in this case, the teacher, member of the teaching staff or other person only has the right to enter the school if there is a negative test result and he/she confirms this in writing or electronically to the headmaster after each test. Adapted to the infection rate, a testing obligation applies to persons who do not belong to the group of persons named in sentence 1 or subsection 2, sentence 1; specifications in this regard shall be made by the Senate Department responsible for education.

(4) For participation in examinations, subsections 1 and 2 shall not apply to examinees.

(5) The school shall process the test results and evidence in accordance with subsections 2 and 3 exclusively for the purpose of prevent the spread of the coronavirus SARS-CoV-2; the information shall not be passed on to third parties subject to reporting obligations in accordance with the Protection against Infection Act. The test result may be kept for four weeks.

§ 6

Mask requirement at schools

If it is necessary to prevent the spread of the coronavirus SARS-CoV-2 and to ensure that regular on-site courses may take place, it shall be required for pupils starting in year 5 and for employees to wear a medical face mask. Sentence 1 shall also apply to persons who do not belong to the group of persons stated in sentence 1 if they are in indoor rooms in which more than one person is located. The responsible borough health office orders the mask requirement in consultation with the school supervisory authority in particular based on a nuanced observation of infection rates and the number of ill staff members at the respective school; the same applies to the details of the mask obligation, in particular regarding the scope of this requirement. If there is a requirement to wear a medical face mask, this requirement shall not apply to the persons named in § 1(3) numbers 3 and 4.

§ 7

Child and youth welfare services

In the context of the Protection against Infection Act, the Senate department responsible for youth and the family shall regulate for the area of child and youth welfare services whether and to what extent there is a requirement to wear a medical mask as well as whether and in what way there is a requirement to carry out tests for an infection with the coronavirus SARS-CoV-2.

§8

Regulations on isolation

(1) Subject to subsection 2, persons who become aware that an antigen test or a test using nucleic acid that has been done on them shows a positive result for infection with the coronavirus SARS-CoV-2 (PCR or another method of nucleic acid amplification technique) 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 PoC antigen test is positive, and to isolate themselves there at all times as of the time the test resulting in the isolation obligation was taken. By way of derogation from sentence 1, persons who work in hospitals, medical practices, nursing care facilities, emergency services or integration assistance institutions and become aware that an antigen test that they have taken shows a positive result for infection with the coronavirus SARS-CoV-2 must immediately confirm the result with a nucleic acid test for the coronavirus SARS-CoV-2 (PCR test); if the test result is positive, sentence 1 shall apply mutatis mutandis. For the purpose of further testing, the person may leave the location in which they are isolating.

(2) For persons who become aware that an 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. Any person who is authorised to carry out PoC testing for other persons is considered qualified supervision as stated in sentence 1.

(3) Persons in isolation shall not be permitted to receive visitors 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.

(4) In the cases of subsection 1, sentence 2 or in the case of voluntary confirmatory testing by means of a nucleic acid detection of the SARS-CoV-2 coronavirus, the isolation shall end with the presence of a negative result of a nucleic acid detection test for the SARS-CoV-2 coronavirus; however, it shall normally end at the latest 10 days after the time of the test justifying the isolation; it shall also end at the earliest on the 5th day after the time of the test justifying the isolation if the isolated person was asymptomatic in the preceding 48 hours. If symptoms started before the test was carried out, the responsible public health office can set the start of symptoms as the

fictitious starting point for the isolation period by way of derogation from subsections 1 and 2.

(5) The obligation to report infections according to the Protection against Infection Act remains unaffected. The responsible public health office may make decisions that deviate from subsections 1, 2 and 4 under consideration of the recommendations from the Robert Koch Institute valid at the respective time. In all other respects, the authorisations of the public health offices remain unaffected.

§ 9

Reporting obligations of accredited hospitals

Authorised hospitals are required to report case numbers and occupancy data in accordance with § 8(5) of the Rescue Services Act (*Rettungsdienstgesetz*) of July 8, 1993 (GVBl., p. 313), as last amended by Article 19 of the Act of October 12, 2020 (GVBl. p. 807), via the Interdisciplinary Care Record (IVENA) on working days by 12 noon on each day or upon special request.

Article 2

Transitional and final provisions

§ 10

Restriction of fundamental rights

This Ordinance restricts the fundamental rights of physical integrity (Article 2(2) sentence 1 of the Basic Law (*Grundgesetz*)) and freedom of the person (Article 2(2) sentence 2 of the Basic Law).

§ 11

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 31 of the Act of October 5, 2021 (BGBl. I, p. 4607), 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), first half sentence and § 2(2), not wear a respirator mask and no exception under § 2(3) or § 1(3) applies,
2. in violation of § 2(1) second half-sentence, not wear a medical mask and no exception under §2(3) or §1(3) applies,
3. in violation of § 4(1) sentence 1, as the responsible person, not ensure that only persons who show proof of a negative test are permitted entry and no exception under § 3(2) applies,
4. in violation of § 4(1) sentence 1, as a visitor enter a facility without showing proof of a negative test and no exception under § 3(2) applies,
5. in violation of § 8(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 and no exception under § 8(1) sentence 3 applies,
6. in violation of § 8(1) sentence 1 in conjunction with § 8(4), not isolate at all times for a period of 10 days as of the point of time at which there was awareness of the positive test and no exception under § 8(1) sentence 3 or § 8(4) applies,
7. in violation of § 8(1) sentence 2, not immediately arrange for a test using nucleic acid detection of the coronavirus SARS-CoV-2,
8. in violation of § 8(1) sentence 2 in conjunction with § 8(4), not isolate at all times immediately after becoming aware of the positive result of the antigen test for a period of 10 days starting with the time the antigen test was taken until the result of a test using nucleic acid for the coronavirus SARS-CoV-2 is received, unless an exception under § 8(1) sentence 3 applies,
9. in violation of § 8(3), receive visitors who do not belong to the person's own household.

§ 12

Entry into force, expiration

(1) This Ordinance shall enter into force on the day following its promulgation in the Berlin Law and Ordinance Gazette.

(2) This Ordinance shall expire at the end of the day on February 12, 2023.

Berlin, January 10, 2023

The Senate of Berlin

Franziska Giffey
Governing Mayor

Daniel Wesener
Senator for Science,
Health, Long-Term Care
and Gender Equality

Appendix (to § 1(2))

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 respirator 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 Respirator mask

For the purposes of this Ordinance, a respirator mask is a protective mask made of special materials 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.

