Fifteenth Bavarian Infection Protection Measures Ordinance (15th BayIfSMV) of 23 November 2021 (BayMBl. No. 816, BayRS 2126-1-19-G)

In accordance with Article 32 clause 1 in conjunction with Article 28 sub-para. 1 and Articles 28a and 28c clause 3 of the German Infection Protection Act (IfSG) of 20 July 2000 (Federal Law Gazette I p. 1045), last amended by Article 1 of the Act of 23 November 2021 (Federal Law Gazette I p. 4906), in conjunction with Article 11 of the COVID-19 Protective Measures - Regulation of Exceptions (SchAusnahmV) of 8 May 2021 (Federal Gazette Part 08.05.2021 V1), which was amended by Art. 20a of the Act of 23 November 2021 (Federal Law Gazette 4906) and Article 9 no. 5 of the Ordinance on Responsibility to Issue Decrees (DelV) of 28 January 2014 (Law and Ordinance Gazette p. 22, BayRS 103-2-V), last amended by the Ordinance of 27 July 2021 (Law and Ordinance Gazette p. 499), the Bavarian State Ministry of Health and Care orders:

[1] Cf. the reasons required under Article 28a(5) IfSG which were published in BayMBl. No. 827 dd. 24.11.2021.

Part 1 General regulations

ARTICLE 1 General recommendations for conduct

All persons are urged to keep a minimum distance of 1.5 m from other people and pay attention to adequate hand hygiene wherever possible. It is necessary to ensure sufficient ventilation in enclosed areas. Where it is not possible to keep a minimum distance of 1.5 m from other people, without prejudice to Article 2, the wearing of a medical face mask is recommended.

ARTICLE 2 Mask obligation

(1) In buildings and enclosed spaces, including enclosed areas of public vehicles, cabins and the like, the obligation to wear an FFP2 face mask applies (‘mask obligation’). The mask obligation does not apply

1. inside private premises,

2. for fixed seats or standing places, as long as a minimum distance of 1.5 m is maintained from other people who are not members of one’s own household,

3. to guests in catering facilities, as long as they are sitting at a table,

4. to services of a type that does not permit such measures,

5. for other compelling reasons.

Article 10 remains unaffected by this.

(2) Outdoors, the mask obligation applies to events as per Article 4 sub-para. 2. Sub-para. 1 clause 2 nos. 3 to 5 applies accordingly.

(3) The following persons are exempted from the mask obligation:

1. Children up to the age of six;
2. Persons who can credibly demonstrate that it is not possible or that it is unreasonable for them to wear a mask due to a disability or for health reasons, as long as they can prove this immediately on the spot, in particular by presenting the original copy of a written medical certificate, which must contain their full name, their date of birth and specific details of the reason for the exemption.

2. Children and youths are only required to wear a medical face mask between their sixth and sixteenth birthday. The mask may be removed if it is necessary for identification purposes or for communicating with persons with impaired hearing.

4. For employees, during their work activities the obligation to wear a medical face mask applies within the framework of occupational health and safety law.

5. Event organisers are obligated to ensure that the requirements of the mask obligation are observed.

ARTICLE 3 Contact restrictions

1. Private meetings in public areas, in privately used rooms and on privately used land in which persons take part who are not vaccinated or recovered as defined in Article 2 nos. 2 and 4 of the COVID-19 Protective Measures Exceptions Ordinance (SchAusnahmV) are only permitted

1. with members of one’s own household and

2. in addition a maximum of two members of another household.

2. Children under the age of 14 are not included in the total number. Spouses, life partners and non-marital partners are considered to form one household with their partner, even if they do not have a common abode.

ARTICLE 4 Vaccinated or recovered (2G)

(1) Access

1. to catering facilities,

2. as far as enclosed spaces are concerned - subject to more specific provisions of this Ordinance - to accommodation, to events of political parties and voter associations, and

3. to zoological and botanical gardens, amusement parks, excursion boats other than regular services, guided tours

may only be granted to visitors insofar as they are, as defined in Article 2 nos. 2 and 4 SchAusnahmV, vaccinated or recovered or under fourteen years of age. In buildings and enclosed areas of the facilities named in clause 1 No. 3, a maximum of 50% of the capacity may be used.

(2) For access to public and private events on non-private premises and in the open air on non-private premises, to sports events which do not constitute individual physical exercise, to cable cars, the cultural sector including theatres, opera houses, concert halls, stages, cinemas, trade fairs, meetings, congresses, furthermore to leisure facilities not mentioned in sub-para. 1 including public baths, spas, saunas, show caves and exhibition mines, indoor sports facilities, amusement arcades and casinos, betting offices, and areas comparable to these in infectiological terms, sub-para. 1 applies mutatis mutandis with the following provisos:

1. In buildings, enclosed areas, stadia or sites whose capacity is limited in other ways, a maximum of 50% of the capacity may be used, but a maximum of 25,000 spectators may be admitted; by way of derogation from the percentage specified in part-sentence 1, 75 % of the capacity may be used in the cultural sector in terms of theatres, operas, concert halls, stages and cinemas; with regard to cable cars, capacity is limited to 75 % of the capacity for enclosed cabins only.

2. The maximum number of participants allowed is determined, subject to no. 1, by the number of available seats with a minimum distance of 1.5 m to other seats.

3. The following applies as regards events:
a) Article 2 sub-para. 1 clause 2 no. 2 does not apply.

b) For visitors to public and private events outside of private premises, the mask obligation does not apply as long as they are seated at the table.

4. In a departure from no. 1, an upper limit of 25,000 visitors per day applies for trade fairs.

5. If more than 1,000 people are admitted, then the event organiser must present the infection protection concept required pursuant to Art. 6 sub-para. 1 to the responsible local authority in advance and without being prompted.

6. Additionally, for sport and cultural events involving more than 1,000 people, the following applies:
   a) it is forbidden to sell, serve or consume alcoholic drinks.
   b) obviously inebriated people must not be granted admission.

(3) In a departure from sub-para. 1, access may be granted to:

1. persons
   a) who cannot be vaccinated for medical reasons and can prove this on the spot, in particular by presenting an original, written medical certificate showing their full name and date of birth,
   b) for absolutely necessary, non-tourist stays at hospitality establishments which cannot be postponed upon presentation of proof of a test result as per Article 5 sub-para. 3,

2. under-age pupils who undergo regular testing in the course of school attendance.

(4) For providers, event organisers, employees, operators and volunteer workers of the establishments and events referred to under sub-para. 1 with contact with customers, Article 28b sub-para. 1 of the Infection Protection Act (IfSG) applies accordingly.

(5) Providers, event organisers and operators are obligated to retain their own test results for two weeks and to inspect the proof of vaccination or recovery or test results that must be presented through effective access control including verification of the identity of each person.

(6) No access restrictions based on this paragraph exist for people who are neither vaccinated nor recovered as defined in Article 2 nos. 2 and 4 SchAusnahmV with respect to religious services and assemblies as defined in Art. 8 of the German Constitution and to polling stations and registration rooms.

ARTICLE 5 Vaccinated, recovered or tested (the ‘3 Gs’ – geimpft, genesen oder getestet)

(1) Access

1. - as far as enclosed areas are concerned - to
   a) universities, libraries and archives, extracurricular educational provision including vocational education, training and skills development and adult education, to driving schools, music schools and areas comparable to these in infectiological terms,
   b) services where physical proximity to the customer is inevitable, and which do not come under the category of medical, therapeutic or care services, and

2. to tourist rail and coach journeys or to scheduled excursion boats may only be granted to visitors who are, as defined in Article 2 nos. 2, 4, 6 SchAusnahmV, vaccinated, recovered or tested.

(2) For access to enclosed areas of properties of the Bavarian Administration of State-Owned Palaces, Gardens and Lakes, to memorial places, museums, exhibitions, sports facilities for individual physical exercise and practical sports training, fitness studios, solaria and in order to take part in amateur drama societies, sub-para. 1 applies with the proviso that Article 4 sub-para. 2 also applies mutatis mutandis.
Insofar as this Ordinance requires proof of the absence of infection with the SARS-CoV-2 coronavirus (proof of test result) for the use of or admission to certain facilities, establishments or areas, written or electronic proof must be presented of a negative test result gained on the basis

1. a PCR test, PoC-PCR test or a test using other nucleic acid amplification methods, carried out no more than 48 hours previously,

2. a PoC antigen test carried out no more than 24 hours previously, or

3. an antigen test designed for self-administration by lay persons (‘self-test’) approved by the Federal Institute for Drugs and Medical Devices and carried out under supervision no more than 24 hours previously,

which additionally must conform to the requirements of the COVID-19 Protective Measures Exemption Ordinance.

The following persons are regarded as equivalent to tested persons:

1. Children up to the age of six,

2. Pupils who undergo regular testing in the course of school attendance,

3. Children not yet attending school.

Article 4 sub-paras. 4 and 5 apply accordingly.

With regard to service and trade companies not included in sub-paras. 1 and 2, no access restrictions based on this paragraph exist.

ARTICLE 6 Infection protection concepts

Operators or event organisers in the following sectors must develop an individual infection concept and comply with it: the commercial sector, markets and shopping centres, services and manual trades accessible to customers, inpatient nursing care facilities as defined in Section 71 (2) of Book XI of the Social Code, facilities for persons with disabilities as defined in Section 2 (1) of Book IX of the Social Code in which integration assistance services are provided during the day and night, retirement homes and senior citizens’ residences, hospitals, preventive care and rehabilitation facilities in which medical care comparable to that provided in hospitals is provided (institutions described in Art. 23 sub-para. 3 clause 1 nos. 1 and 3 IfSG) and in residential intensive care facilities outside hospitals where outpatients are treated, assemblies in enclosed spaces in the sense of Article. 8 of the German Constitution, sports facilities and sporting events, leisure facilities of all kinds, catering facilities, the accommodation sector, meetings, congresses, trade fairs, universities, schools, child day care facilities, vocational education, training and skills development, extracurricular education, libraries, archives, the cultural sector, theatres, opera houses, concert halls, stages, cinemas, museums, exhibitions, memorial sites, properties belonging to the Bavarian Administration of State-Owned Palaces, Gardens and Lakes, ensembles of non-professional or amateur performers, and in comparable cases. The above does not apply if an event or assembly involves less than 100 people. The responsible authority can demand that an infection protection concept be drawn up, either generally or in individual cases. Unless otherwise specified, the infection protection concepts must be presented to the responsible local authority on request only.

The relevant state ministry responsible for the sector, in consultation with the State Ministry of Health and Care, shall announce conceptual frameworks under infection protection law for specific sectors. The operators or event organisers in the sectors affected by this must create infection protection concepts that accord with the requirements of the conceptual framework.

ARTICLE 7 Religious services

For religious services which are open to the public in churches, synagogues and mosques, and meetings of other religious communities, the following applies in addition to the general
1. Religious services or meetings which only vaccinated, recovered or tested people attend can be held without any upper limit to the number of attendees; otherwise, the maximum number of participants allowed in buildings, including vaccinated and recovered persons, is determined by the number of available seats with a minimum distance of 1.5 m to other seats.

2. An infection concept which minimises the possible infection risks depending on the religious community and its religious practices must be put in place.

ARTICLE 8 Assemblies as defined by Article 8 of the German Constitution

(1) In the case of assemblies as defined by Article 8 of the Constitution which are held outdoors, a minimum distance of 1.5 m must be maintained between all participants. If necessary, the authorities responsible according to Article 24 sub-para. 2 of the Bavarian Assembly Act (BayVersG) must ensure that the infection risks arising from the assembly also remain limited to a reasonable level in other respects, by means of restrictions in accordance with Art. 15 BayVersG.

(2) Assemblies as defined by Article 8 of the German Constitution which are held in enclosed spaces and in which only vaccinated, recovered or tested persons take part can be held without any upper limit to the number of attendees; in other cases, the maximum number of participants allowed, including vaccinated and recovered persons, is determined by the number of available seats with a minimum distance of 1.5 m from other seats.

ARTICLE 9 Gastronomy

In addition to the general regulations, the following applies to catering facilities:

1. In enclosed rooms, dancing is not permitted.

2. In enclosed rooms, playing music and musical accompaniment is only permitted as background music, except at events permitted under this Ordinance.

3. It is prohibited to run licensed public bars as per Section 1 sub-para. 1 no. 1 and Section 2 of the German Licensing Act.

4. The dispensing and delivery of take-away food and drinks is permitted.

5. Article 4 does not apply to staff canteens not accessible to the public.

ARTICLE 10 Schools

(1) For lessons and other school activities, lunchtime supervision at schools and teaching and study activities at the State Institute for the Training of Specialist Subject Teachers and the State Institute for the Training of Support Teachers, Article 2 applies with the addition of the following measures:

1. Article 2 sub-para. 1 clause 2 no. 2 does not apply.

2. The mask obligation also applies during sports lessons in closed rooms.

3. The mask obligation ceases to apply
   a) for pupils on account of compelling reasons related to teaching, learning or school organisation, after approval by the supervisory staff, or
   b) during ventilation of the classroom or common room with short bursts of air.

2Pupils and teachers and other staff of schools may, notwithstanding Article 2, wear a medical face mask. 3Pupils up to and including Year 4 may wear a textile mouth and nose covering instead of a medical face mask.

(2) Pupils, no matter whether they are vaccinated or recovered, are only permitted to participate in classroom teaching, in other school activities or face-to-face school holiday courses and lunchtime and
emergency care groups if, three times a week, they provide proof of a test result as per Article 5 sub-para. 3 nos. 1 and 2, or have taken a self-test provided by and to be used under supervision at school, with a negative result. 2For pupils at elementary level, or in Year 5 or 6, or at special needs schools which focus on intellectual development, physical and motoric development and vision, clause 1 applies with the proviso that, after a decision by the State Ministry for Education and Culture, two PCR pool tests weekly may take the place of three weekly self-tests; in this case, every Monday morning proof of an additional test result must be presented or a self-test performed under supervision. 3Compulsory school attendance remains unaffected. 4After a case of infection becomes known in a class, the pupils of this class must provide daily proof of a test result for five days of classroom teaching. 5The school will process the test result for the purposes referred to in clauses 1 and 2. 6The test data will not otherwise be passed on to third parties, subject to reporting duties under the Infection Protection Act. 7As regards participation in PCR pool tests, the laboratories and transport personnel engaged to perform the testing are not regarded as third parties in the meaning of clause 6. 8The test result shall be kept for a maximum of 14 days. 9The State Ministry for Education and Cultural Affairs may announce exceptions for pupils with special educational needs.

(3) For teachers and other school staff, Article 28b sub-para. 1 IfSG applies.

(4) 1Third parties, in particular parents, may only enter the school premises insofar as they are, as defined in Article 2 nos. 2, 4, 6 SchAusnahmV, vaccinated, recovered or tested. 2Articles 4 and 5 remain unaffected.

(5) For pre-school institutions, sub-para. 2 clauses 1, 4 to 9 apply accordingly.

ARTICLE 11  Child day care

(1) The running of day-care centres, day-care babysitter and nanny services, holiday day-care centres and organised playgroups for children is only permitted subject to the condition that the children are cared for in fixed groups.

(2) 1Children not yet attending school may, from the age of one, only use offers of day-care centres, special pedagogical day-care facilities and day-care babysitters and nannies if they take part in PCR pool testing in the facility or if their legal guardians provide proof of a test result as per Article 5 sub-para. 3 no. 1 or 2 with regard to the child three times a week or credibly affirm that a self-test with a negative result was carried out on the child no more than 24 hours ago. 2The providers of child day-care facilities or curative day-care centres and child minders must provide three tests per week of care for every child not yet enrolled in school which enable direct pathogen detection of the SARS-CoV-2 coronavirus, or must make it possible for three self-tests to be collected from pharmacies free of charge. 3When a case of infection within a group becomes known, the following applies for the next five days of day care:

1. in derogation of clause 1, children as referred to in clause 1 may, regardless of their vaccination or recovery status, only use offers if their legal guardians provide proof of a test result as per Article 5 sub-para. 3 no. 1 or 2 with regard to the child every day or credibly affirm that a self-test with a negative result was carried out on the child no more than 24 hours ago;

2. in derogation of clause 2, the providers of child day-care facilities must offer five tests or make it possible for five self-tests to be collected from pharmacies free of charge.

(3) 1Pupils may only attend day care if they have tested negative as set out in Article 10 sub-para. 2. 2If the requirements for attending classroom teaching or emergency childcare on the same day as set out in Article 10 sub-para. 2 have not yet been met, Article 10 sub-para. 2 shall apply accordingly, with the exception that ‘the childcare facility’ shall replace ‘the school’.

(4) For staff of the facilities, Article 28b sub-para. 1 IfSG applies.

(5) 1Third parties, in particular parents, may only enter the premises of the facilities - except for bringing or collecting the children - insofar as they are, as defined in Article 2 nos. 2, 4, 6 SchAusnahmV, vaccinated, recovered or tested. 2Articles 4 and 5 remain unaffected.

ARTICLE 12  Other specific regulations

(1) It is forbidden to party in public places and grounds; public festivals and annual markets are also prohibited.
(2) The consumption of alcohol is prohibited in public areas of frequent encounters in town centres or other public places in the open air where people are present either in close proximity to each other or for more than a short space of time. The exact locations involved are determined by the responsible local authority in each case.

(3) Clubs, discotheques, brothels and comparable leisure facilities are closed; dancing events are prohibited, unless they are for sports purposes.

**Part 3 Final provisions**

**ARTICLE 13 Additional instructions, exemptions**

(1) Additional or supplementary instructions from the authorities responsible for the enactment of the Infection Protection Act regarding the provisions of this Ordinance or the infection protection concepts issued on its basis remain unaffected.

(2) Upon application, special permits may be granted by the responsible local authority, provided that each case is acceptable in terms of infection protection legislation.

Special exemptions for a general group of persons or a general constellation of cases may only be granted in agreement with the responsible government under the conditions of clause 1.

**Article 14 Offences**

An offence within the meaning of Section 73 sub-para. 1a no. 24 IfSG is committed by anyone who, intentionally or negligently,

1. in breach of Article 2, does not comply with the mask obligation or, in breach of Article 2 sub-para. 5, in their role of event organiser does not ensure that the mask obligation is complied with,

2. in breach of Article 3, spends time with other persons,

3. in breach of Articles 4 and 5, enters a facility specified therein without the necessary evidence of vaccination, recovery or testing, or uses a service specified therein or, in their role of event organiser or owner of a business or facility, does not ensure pursuant to Article 4 sub-para. 5, also in conjunction with Article 5 sub-para. 5, that the guest, visitor or user, or volunteer, presents evidence of vaccination, recovery or testing or, in breach of Article 4 sub-para. 5, also in conjunction with Article 5 sub-para. 5, as a provider, event organiser or operator, fails to retain their own proof of a test result for two weeks,

4. in breach of Article 4 sub-para. 2, stages events,

5. in breach of Article 6, does not draw up an infection protection concept,

6. in breach of Article 8 sub-para. 1 clause 1, takes part in an assembly or, in breach of Article 8 sub-para. 2, organises assemblies in enclosed spaces,

7. in breach of Article 9, runs a gastronomic business,

8. in breach of Article 10, operates a private school as defined by Art. 90 et seq. of the Bavarian Education and Training Act without fulfilling the obligations set out in Article 10 sub-para. 2 or, in breach of Article 10 sub-para. 4, enters the school grounds,

9. in breach of Article 11, operates a child day-care facility without complying with the obligations specified therein, in breach of Article 11 sub-para. 2 clause 1, also in conjunction with Article 11 sub-para. 2 clause 3, as a legal guardian fails to supply proof of a test result or makes a false assurance, or, in breach of Article 11 sub-para. 5, enters the grounds of facilities,

10. in breach of Article 12 sub-para. 1, parties in public places or grounds or stages a public festival or an annual market or, in breach of Article 12 sub-para. 2, consumes alcohol,

11. in breach of Article 12 sub-para. 3, operates the establishments specified therein, stages a dancing event or takes part in a dancing event.
ARTICLE 15 Effective date, expiry date

This Ordinance takes effect on 24 November 2021 and expires on 19 March 2022 at midnight.

Munich, 23 November 2021

Bavarian State Ministry of Health and Care

Klaus Holetschek, State Minister