



City of San Leandro

Meeting Date: November 1, 2021

Staff Report

File Number: 21-596

Agenda Section: ACTION ITEMS

Agenda Number: 10.B.

TO: City Council

FROM: Fran Robustelli
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a City of San Leandro City Council Urgency Ordinance and a Regular Ordinance to Require Proof of COVID-19 Vaccination to Enter Specified Places of Public Accommodation

RECOMMENDATION

Per the City Council's direction at the October 4, 2021 City Council meeting, staff presents for the City Council's consideration and possible action an Urgency Ordinance that would go into effect immediately and a Regular Ordinance to require proof of COVID-19 vaccination at specified indoor locations within the City.

BACKGROUND AND SUMMARY

The COVID-19 pandemic remains a significant challenge in the City of San Leandro, especially in light of the highly contagious Delta variant. The number of COVID-19 cases and rate of community transmission remain a matter of significant public concern and, according to health experts, both are capable of increasing without warning because respiratory viruses and the flu spread more easily in the fall and winter months.

The United States Centers for Disease Control and Prevention, California Department of Public Health, and the Alameda County Department of Health uniformly recommend widespread vaccination in order to combat the spread of COVID-19, protect those who cannot be vaccinated by reason of age or immune weakness, safeguard the capacity of the local health care system, and prevent unnecessary and premature deaths. Although vaccines are widely available throughout the City and Alameda County, many eligible residents are not yet vaccinated. If there is not a significant increase in vaccination coverage, health experts warn that there will be a cycle of repeated surges every few months. The City has an interest in increasing vaccination rates which, in turn, will help stem the spread of COVID-19 and protect its residents against disease that threatens the health, safety, and wellbeing of everyone.

In light of state and local guidance, requiring vaccination of all eligible individuals who frequent certain indoor businesses that allow groups of unassociated individuals to interact for long periods of time where patrons remove their masks to eat or drink, engage in physical exertion or aerobic activity, or do not adequately physically distance, will provide the strongest protection to the health and safety of the City's residents, including those who for reasons of age or immune weakness cannot be vaccinated. Requiring vaccination or proof of a negative COVID-19 test for individuals who enter such specified establishments will promote public health and safety. These requirements also offer an alternative approach to stringent public health measures such as complete business closures that were implemented previously.

The City of San Leandro therefore seeks to promote the health, safety, and welfare of residents, those who work and recreate in the City, and to encourage vaccination, by requiring proof of full vaccination with a COVID-19 vaccine to enter specified establishments within the City that routinely allow for higher-risk interactions between unassociated individuals, such as full service restaurants, large scale and small scale fast food establishments, bars, cafes, gyms, and theaters, amongst others.

At these establishments, implementation of a proof of vaccination requirement is critical in order to protect City residents, visitors, and those businesses' employees, while also attempting to avoid future shutdowns and maintain the City's economic recovery.

If approved by the City Council, the urgency ordinance would go into effect immediately; the regular ordinance would go into effect thirty days after its second reading, which is currently scheduled for November 15, 2021.

City staff will commence enforcement, which may include at staff's enforcement discretion initially by courtesy notice and education. The Ordinance will automatically sunset on January 31, 2022 or when the proclamation of a local emergency is terminated by the City, whichever occurs first, unless otherwise amended by the City Council.

Proposed Ordinance Requirements

The proposed Ordinance would require proof of vaccination for adult patrons (18 years of age or older) to enter the indoor portion of the following types of businesses (as defined in the City of San Leandro Zoning Code):

1. Establishments where food or drink is served indoors, including but not limited to Full Service Restaurants, Bars, Large Scale and Small Scale Fast Food Establishments, Brewpubs, and Cafés;
2. Health and Fitness Centers and Instruction and Improvement Services;
3. Card rooms, Dance Clubs, Entertainment Events, Game Centers, Theaters, and Theaters (Small Scale).

Proof of vaccination would not be required for adult patrons utilizing outdoor areas, or for customers who enter covered businesses for brief periods of time to use the restroom, pick up "to go" orders or perform necessary repairs, provided that the patron wears a well-fitting mask at all times while indoors. An adult patron may be exempt from the proof of vaccine requirement if they are entitled under any applicable law to a reasonable accommodation for a medical condition or a sincerely held religious belief. Such exempt adult patron may only utilize indoor areas of covered businesses by providing proof of negative COVID-19 test. Additionally, the Ordinance

does not apply to the brief service of food or drink as a part of a religious ceremony or to any location already required by a separate Federal, State or County Order to check proof of vaccination.

Further details regarding the implementation of the proof of vaccine requirement, including means of performing vaccine verification, determining exemption, and implementing the requirement in particular circumstances, are included in the Ordinance.

Statewide Context

Based on a search of available online resources, city staff was thus far able to identify only four other jurisdictions in California that have adopted similar requirements mandating proof of vaccination to enter specified places of public accommodation. Those agencies include:

- City and County of San Francisco*
- City of Berkeley*
- City of Los Angeles
- Contra Costa County*

*Of the four agencies identified above, three of them have their own public health officer and so their mandatory proof of vaccination requirements were adopted via a public health order, rather than via a local ordinance.

Potential Impact to Local Businesses and Organizations

Based on available data generated by the City of San Leandro's business license records, it is estimated that approximately 250 businesses would be affected by the proposed proof of vaccination requirements. If the Ordinance were adopted, those businesses would need to modify their daily operations to ensure that they could implement the proposed requirements, which could include updated procedures, electronic equipment, signage, staff and customer education, and additional staffing. The customer volume and overall revenues may be impacted, with unvaccinated customers or those who do not have their proof of vaccine on hand, not patronizing the business. Outreach to mitigate the impact on covered businesses will include direct notices to businesses, public messaging, information on City website including a frequently asked questions guide, and an informational webinar.

Resources for Local Enforcement

The adopted FY 2021-22 city budget has no funding appropriated to support enforcement of the provisions of this ordinance. Due to highly constrained existing staffing resources, enforcement of the provisions of this ordinance would likely be prioritized based on public reports of non-compliance, balanced against existing workloads associated with staff's primary work duties and responsibilities.

Attachments:

- Proposed Urgency Ordinance
- Proposed Regular Ordinance

PREPARED BY: Eric Engelbart, Deputy City Manager, City Manager's Office



**Urgency Ordinance to
Require Proof of Covid-19
Vaccination to Enter
Specified Places of Public
Accommodation**

**November 1, 2021
City Council Meeting**

Proposed Ordinance Requirements

Proof of Vaccination Required For Adult Patrons To Enter the Indoor Portion Of Covered Locations*:

1. Establishments where food or drink is served indoors, including but not limited to:
 - Full-Service Restaurants
 - Bars
 - Large Scale & Small Scale Fast Food Establishments
 - Brewpubs
 - Cafés
2. Health and Fitness Centers and Instruction and Improvement Services
3. Card rooms, Dance Clubs, Entertainment Events, Game Centers, Theaters, and Theaters (Small Scale)

*As defined in the San Leandro Zoning Code

**STOP THE
SPREAD
TO ENTER**



**PROOF OF COVID-19
VACCINATION
REQUIRED**

Proposed Ordinance Requirements (cont'd)

Covered locations do not include:

- Brief provision of food or drink as part of a religious ceremony
- Any location that does not have an indoor portion
- Any location already required to confirm vaccination by Federal, State or County Order

Businesses, locations and venues may continue to establish their own more stringent requirements

All customers may enter covered businesses for brief periods to use the restroom, pick up “to go” orders or perform repairs, provided they wear a mask at all times

Applicability:

- Applies to all adult patrons
- Excludes essential services

Sunset:

- Conclusion of local state of emergency declaration, or
- January 31, 2022, or
- as amended by the City Council (whichever is sooner)

National & Statewide Context

Other Known Jurisdictions with Proof of Vaccination Requirements+

- City and County of San Francisco*
- City of Berkeley*
- City of Los Angeles
- Contra Costa County*
- New York City*

*agencies w/ their own public health officer; requirements created via public health order

+Alameda County Public Health Officer has indicated no plans to implement Countywide proof of vaccination requirements



Impact & Enforcement

- ~250 local businesses expected to be impacted
- Covered businesses required to modify daily operations, provide additional training & education to customers and employees
- Customer volume and overall revenues may be impacted
- No funding or dedicated resources for enforcement provided in adopted FY 2021-22 City budget
- City Outreach to mitigate impacts - messaging, informational handouts, sample materials, webinars, etc.

How to Verify Vaccine Status

- ✓ Verify name matches photo ID
- ✓ Verify vaccine maker
 - a If J&J, verify single dose with date 14 days prior to today.
 - b If Pfizer or Moderna, verify two doses with the second being 14 days prior to today.



Recommendation

- Review information and draft ordinance
- Provide direction to staff or take action

Feedback or Questions?



City of San Leandro

Meeting Date: November 1, 2021

Urgency Ordinance

File Number: 21-597

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Fran Robustelli
City Manager

BY: City Council

FINANCE REVIEW: Not Applicable

TITLE: City of San Leandro City Council Urgency Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

Urgency Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

WHEREAS, the novel coronavirus 19 (COVID-19) disease is caused by a virus easily transmissible from person to person and may result in serious illness or death, and is classified by the Centers for Disease Control and the World Health Organization (WHO) as a pandemic; and,

WHEREAS, COVID-19 has spread broadly throughout the State of California and remains a significant, imminent health risk to the community, especially to members of our most vulnerable populations; and,

WHEREAS, COVID-19 has been declared as a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of the disease; and,

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to rising cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and,

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 16, 2020, at its regular meeting the San Leandro City Council confirmed the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a "Stay Home - Stay Healthy" proclamation closing all non-essential workplaces, requiring people to stay

home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. The “Stay Home - Stay Healthy” proclamation identified healthcare, public health and emergency services, law enforcement, and grocery stores, amongst others as essential business sectors critical to protecting the health and well-being of all Californians; and,

WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-19, Alameda County’s Public Health Officer issued the “Safer at Home” Order to control the spread of COVID-19 by closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes; and,

WHEREAS, on December 3, 2020, California Governor Gavin Newsom extended the “Stay Home - Stay Healthy” proclamation; and,

WHEREAS, on December 3, 2020, in order to mitigate the effects of COVID-19 within the County of Alameda, the Alameda County Health Department extended the “Safer at Home” Order to control the effects and spread of COVID-19; and,

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and,

WHEREAS, on February 3, 2021, California Governor Gavin Newsom announced that there was a California or West Coast variant of COVID-19 that had grown more common across the state; and,

WHEREAS, since the Governor’s announcement on February 3, the highly contagious Delta variant emerged, causing a spike in cases throughout the state; and,

WHEREAS, on August 3, 2021 the County of Alameda Health Officer issued Order No. 21-03 which requires all individuals in the county wear face masks when indoors in workplaces and public settings; and,

WHEREAS, as of October 9, 2021, the County of Alameda reported 115,943 cases of COVID-19, including 1,355 deaths; and,

WHEREAS, crowded indoor spaces such as gyms, movie theaters, and grocery stores pose a high risk of transmission of COVID-19; and,

WHEREAS, unvaccinated Californians are 15 to 20 times more likely to die of COVID-19 than vaccinated Californians; and,

WHEREAS, on October 11, 2021 the California Department of Public Health published data showing that the death rate among unvaccinated Californians aged 16 and older rose during September, 2021; and

WHEREAS, airborne aerosol transmission of the COVID-19 virus can occur at distances of greater than six feet; and

WHEREAS, particles carrying COVID-19 can linger in the air for up to several hours after an infected person has left a room; and

WHEREAS, an urgency ordinance is necessary to avoid the immediate threat to public peace, health, welfare, and safety such that failure to adopt this urgency ordinance could result in the avoidable exposure to COVID-19 for the City’s residents and community members.

NOW, THEREFORE, THE CITY OF SAN LEANDRO CITY COUNCIL ORDAINS AS FOLLOWS:

SEC. 1 RECITALS.

The City Council finds the foregoing recitals to be true and correct and hereby incorporates those

recitals into this Ordinance.

SEC. 2 URGENCY FINDINGS.

The City Council of the City of San Leandro hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, welfare and safety that warrants this urgency ordinance, which findings are based upon the facts stated in the recitals above, and in the staff report dated November 1, 2021 as well as any oral and written testimony at the November 1, 2021 regular City Council meeting. This Ordinance is declared by the City Council to be an urgency ordinance under City of San Leandro Municipal Code Section 1-1-345(b) necessary for the immediate preservation of the public peace, health, welfare, and safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SEC. 3 ORDINANCE.

The City Council hereby makes the findings contained herein and hereby adopts this uncodified Ordinance to read as follows.

Section 3.1 Definitions

The following definitions shall apply to this Ordinance:

- A. **City** means the City of San Leandro
- B. **Citation** means an Administrative citation issued pursuant to Chapter 1-12 of the San Leandro Municipal Code.
- C. **Covered Location** means the following locations in the City as defined by San Leandro Zoning Code Section 1.12.108:
 - 1. Establishments where food or drink is served indoors, including but not limited to Full Service Restaurants, Bars, Large Scale and Small Scale Fast Food Establishments, Brewpubs, and Cafés. Covered Locations do not include establishments or facilities which solely and briefly provide food or drink as part of a religious ceremony (e.g., communion or kiddush);
 - 2. Health and Fitness Centers and Instruction and Improvement Services;
 - 3. Card rooms, Dance Clubs, Entertainment Events, Game Centers, Theaters, and Theaters (Small Scale).

A Covered Location does not include any location that does not have an Indoor Portion. A Covered Location does not include any location that is already required by a separate Alameda County Order to check proof of COVID-19 vaccination status prior to providing indoor service.

Nothing in this article shall be interpreted to preclude locations in the City that are not included in the above list from issuing proof of vaccination requirements. Nothing in this article shall be interpreted to preclude Covered Locations from issuing more stringent requirements than required by this Ordinance.

- D. **COVID-19** means coronavirus disease 2019, the infectious disease caused by the SARS-CoV-2 virus that resulted in a global pandemic, including variants thereof.
- E. **COVID-19 Vaccine** means a vaccine authorized to prevent COVID-19 by the United States Food and Drug Administration (FDA), including by way of an emergency use authorization, or by the World Health Organization (WHO).

- F. **Full Vaccination/Fully Vaccinated** means 14 or more days after completing the entire recommended series of vaccination with a COVID-19 Vaccine. Currently, an individual is considered Fully Vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 Vaccine or two weeks after receiving the single dose of the Johnson & Johnson COVID-19 Vaccine.
- G. **Adult Individual Eligible for a COVID-19 Vaccine** means a person 18 years of age or older, for whom a COVID-19 Vaccine is authorized for use by the FDA, including by way of an emergency use authorization or, in the case of a foreign visitor or traveler, a person for whom a COVID-19 Vaccine is authorized by the WHO.
- H. **Indoor Portion** means any part of a Covered Location with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an Indoor Portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a tent or plastic dome, if it has adequate ventilation to allow for air circulation.
- I. **Non-resident Performer** means a non-resident performing artist, nonresident professional athlete or sports team, or non-resident individual accompanying a performing artist or sports team as part of their regular employment.
- J. **Adult Patron** means an Adult Individual, aged 18 years or older, eligible to Receive a COVID-19 Vaccine who enters, patronizes, attends an event, or purchases goods or services at a Covered Location.
- K. **Photo Identification** means an original or copy of an identification card, including:
 - 1. Driver's license;
 - 2. Government issued identification card;
 - 3. School or work identification card; or
 - 4. Passport.
- L. **Proof of Negative COVID-19 Test** means a printed document, QR code, email, or text message displayed on a phone from a test provider or laboratory that shows results of a polymerase chain reaction (PCR) or antigen COVID-19 test that either has Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services, that was conducted within 72 hours before entry into a Covered Location. The printed document, email, or text message must include the person's name, type of test performed, date of the test, and negative test result.
- M. **Proof of Vaccination** means one of the following demonstrating proof of Full Vaccination:
 - 1. A vaccination card issued by the United States Centers for Disease Control and Prevention (CDC) specific as COVID-19 vaccination, which includes the name of the person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by another foreign governmental agency;
 - 2. A photo of a vaccination card (both sides), compliant with Subsection M.1. above as a separate physical photograph or stored on a phone or electronic device;
 - 3. Documentation of vaccination from a licensed healthcare provider; or
 - 4. A personal digital COVID-19 vaccine record issued by the State of California or

similar documentation issued by another state, local, or foreign governmental jurisdiction, or by a private company. This Ordinance urges California residents to visit the State of California's Digital COVID-19 Vaccine Record website at myvaccinerecord.cdph.ca.gov and download a QR Code of their proof of vaccination onto their mobile phone.

Section 3.2. Proof of Vaccination Required For An Adult Patron To Enter the Indoor Portion Of A Covered Location.

- A. Beginning on November 2, 2021 and by no later than November 15, 2021, a Covered Location shall display prominently on its premises, visible to Patrons prior to entrance, an advisory notice informing Patrons that, beginning on November 2, 2021, Proof of Vaccination is required for Adult Patrons, aged 18 years or older, to enter any Indoor Portion of a Covered Location.
- B. Beginning on November 2, 2021 a Covered Location shall require each Adult Patron, aged 18 years or older, to provide Proof of Vaccination upon entering an Indoor Portion of a Covered Location. A Covered Location is required to cross-check Proof of Vaccination for each Adult Patron against Photo Identification. Subject to the exemptions below, an Adult Patron shall not be permitted to enter an Indoor Portion of a Covered Location without Proof of Vaccination.
 1. An Adult Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical condition or restriction or a sincerely held religious belief, as follows.
 - (a) To be eligible for an exemption due to a medical condition or restriction, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a medical condition or restriction that qualifies the Adult Patron for the exemption.
 - (b) To be eligible for an exemption due to a sincerely held religious belief, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a sincerely held religious belief that qualifies the Adult Patron for the exemption.
 2. If a Covered Location determines an Adult Patron has met the requirements of an exemption pursuant to this section because of a medical condition or restriction or sincerely held religious belief, the Covered Location shall require the Adult Patron to use the portion of a Covered Location that is not an Indoor Portion. If such use is not available, the Adult Patron may be permitted to enter an Indoor Portion of a Covered location by providing Proof of Negative COVID-19 Test and Photo Identification.
 3. An Adult Patron who does not provide Proof of Vaccination and who does not qualify for an exemption may use the portion of a Covered Location that is not an Indoor Portion. An Adult Patron who does not provide Proof of Vaccination may be allowed to enter an Indoor Portion of a Covered Location for brief and limited periods of time to use the restroom, order, pick-up, or pay for food or drink "to go," or perform necessary repairs, provided that the Patron wears a well-fitting mask at all times while in the Indoor Portion of the Covered Location. To the extent feasible, a Covered Location may offer service outside for an Adult Patron who does not provide Proof of Vaccination, including curbside pickup, drive thru delivery, and

- outdoor seating and dining.
4. A Covered Location may require Proof of Vaccination upon the Adult Patron's first in-person interaction with staff (e.g., at the time of ordering) rather than at the entrance to the establishment, but only if all such patrons wear a well-fitting mask at all times after entering the indoor portion of the facility and before showing such proof.
 5. Theaters where concessions are sold may require proof of Full Vaccination to be shown at the time of patrons' purchase of concessions rather than at the entrance to the Covered Location.
 6. This section does not apply to a Non-resident Performer, who enters a Covered Location for purposes of performing or competing.
- C. A Covered Location must develop or may use what is provided by the City and keep a written record describing the protocol for implementing and enforcing the requirements of this Ordinance.

Section 3.4 Enforcement and Rules and Regulations.

Violations of this Ordinance are subject to enforcement under Chapter 1-12 of the San Leandro Municipal Code. For any Covered Location or Patron aggrieved by a violation of this Ordinance, any person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the Covered Location or Patron violating this Ordinance. A Covered Location or Patron, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation. Any person or entity enforcing this Ordinance on behalf of the public as provided for under applicable state law, upon prevailing, shall be entitled only to equitable, injunctive, and/or restitution relief, and reasonable attorneys' fees and costs. Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

The City Manager may promulgate and update as necessary rules and regulations consistent with this ordinance for further clarification of its provisions. Any rules or regulations shall have the force and effect of law, and may be relied upon by a Covered Location or Patron to determine their rights and responsibilities under this Ordinance.

Section 3.5 Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article, including its application to other persons or circumstances. The City Council hereby declares that it would have adopted this article and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

Section 3.6 No Conflict with Federal or State Law.

Nothing in this article shall be interpreted so as to create any power or duty in conflict with any state or federal law.

Section 3.7 Sunset.

This ordinance shall sunset at 11:59 p.m. on January 31, 2022 or upon the lifting of the City of San Leandro Proclamation of Emergency that was ratified by the City Council on March 16, 2020, whichever occurs first, unless otherwise amended by the City Council.

SEC. 4 URGENCY CLAUSE.

The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: Establishing a vaccination requirement for patrons in certain higher-risk locations in the City of San Leandro is a subject of imminent concern in light of the current and ongoing hazards of the COVID-19 pandemic, including the continuous high rate of community transmission, and the current data on the safety and efficacy of the COVID-19 vaccines. To promote the health and safety of the residents, visitors, and the employees of the City of San Leandro, this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective on November 2, 2021 pursuant to San Leandro Municipal Code Section 1-1-345(b).



City of San Leandro

Meeting Date: November 1, 2021

Ordinance

File Number: 21-608

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Fran Robustelli
City Manager

BY: City Attorney and
Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: City of San Leandro City Council Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

WHEREAS, the novel coronavirus 19 (COVID-19) disease is caused by a virus easily transmissible from person to person and may result in serious illness or death, and is classified by the Centers for Disease Control and the World Health Organization (WHO) as a pandemic; and,

WHEREAS, COVID-19 has spread broadly throughout the State of California and remains a significant, imminent health risk to the community, especially to members of our most vulnerable populations; and,

WHEREAS, COVID-19 has been declared as a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of the disease; and,

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to rising cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and,

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 16, 2020, at its regular meeting the San Leandro City Council confirmed the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a "Stay

Home - Stay Healthy” proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. The “Stay Home - Stay Healthy” proclamation identified healthcare, public health and emergency services, law enforcement, and grocery stores, amongst others as essential business sectors critical to protecting the health and well-being of all Californians; and,

WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-19, Alameda County’s Public Health Officer issued the “Safer at Home” Order to control the spread of COVID-19 by closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes; and,

WHEREAS, on December 3, 2020, California Governor Gavin Newsom extended the “Stay Home - Stay Healthy” proclamation; and,

WHEREAS, on December 3, 2020, in order to mitigate the effects of COVID-19 within the County of Alameda, the Alameda County Health Department extended the “Safer at Home” Order to control the effects and spread of COVID-19; and,

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and,

WHEREAS, on February 3, 2021, California Governor Gavin Newsom announced that there was a California or West Coast variant of COVID-19 that had grown more common across the state; and,

WHEREAS, since the Governor’s announcement on February 3, the highly contagious Delta variant emerged, causing a spike in cases throughout the state; and,

WHEREAS, on August 3, 2021 the County of Alameda Health Officer issued Order No. 21-03 which requires all individuals in the county wear face masks when indoors in workplaces and public settings; and,

WHEREAS, as of October 9, 2021, the County of Alameda reported 115,943 cases of COVID-19, including 1,355 deaths; and,

WHEREAS, crowded indoor spaces such as gyms, movie theaters, and grocery stores pose a high risk of transmission of COVID-19; and,

WHEREAS, unvaccinated Californians are 15 to 20 times more likely to die of COVID-19 than vaccinated Californians; and,

WHEREAS, on October 11, 2021 the California Department of Public Health published data showing that the death rate among unvaccinated Californians aged 16 and older rose during September, 2021; and

WHEREAS, airborne aerosol transmission of the COVID-19 virus can occur at distances of greater than six feet; and

WHEREAS, particles carrying COVID-19 can linger in the air for up to several hours after an infected person has left a room; and

WHEREAS, an ordinance is necessary to mitigate the threat to public peace, health, welfare, and safety such that failure to adopt this ordinance could result in the avoidable exposure to COVID-19 for the City’s residents and community members.

NOW, THEREFORE, THE CITY OF SAN LEANDRO CITY COUNCIL ORDAINS AS

FOLLOWS:

SEC. 1 RECITALS.

The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

SEC. 2 RESERVED.

SEC. 3 ORDINANCE.

The City Council hereby makes the findings contained herein and hereby adopts this uncodified Ordinance to read as follows.

Section 3.1 Definitions

The following definitions shall apply to this Ordinance:

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- C. **Covered Location** means the following locations in the City as defined by San Leandro Zoning Code Section 1.12.108:
 - 1. Establishments where food or drink is served indoors, including but not limited to Full Service Restaurants, Bars, Large Scale and Small Scale Fast Food Establishments, Brewpubs, and Cafés. Covered Locations do not include establishments or facilities which solely and briefly provide food or drink as part of a religious ceremony (e.g., communion or kiddush);
 - 2. Health and Fitness Centers and Instruction and Improvement Services;
 - 3. Card rooms, Dance Clubs, Entertainment Events, Game Centers, Theaters, and Theaters (Small Scale).

A Covered Location does not include any location that does not have an Indoor Portion. A Covered Location does not include any location that is already required by a separate Alameda County Order to check proof of COVID-19 vaccination status prior to providing indoor service.

Nothing in this article shall be interpreted to preclude locations in the City that are not included in the above list from issuing proof of vaccination requirements. Nothing in this article shall be interpreted to preclude Covered Locations from issuing more stringent requirements than required by this Ordinance.

- D. **COVID-19** means coronavirus disease 2019, the infectious disease caused by the SARS-CoV-2 virus that resulted in a global pandemic, including variants thereof.
- E. **COVID-19 Vaccine** means a vaccine authorized to prevent COVID-19 by the United States Food and Drug Administration (FDA), including by way of an emergency use authorization, or by the World Health Organization (WHO).
- F. **Full Vaccination/Fully Vaccinated** means 14 or more days after completing the entire recommended series of vaccination with a COVID-19 Vaccine. Currently, an individual is considered Fully Vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 Vaccine or two weeks after receiving the single dose of the Johnson & Johnson COVID-19 Vaccine.
- G. **Adult Individual Eligible for a COVID-19 Vaccine** means a person 18 years of age or older, for whom a COVID-19 Vaccine is authorized for use by the FDA, including by way of an emergency use authorization or, in the case of a foreign visitor or traveler, a person for whom a COVID-19 Vaccine is authorized by the WHO.
- H. **Indoor Portion** means any part of a Covered Location with a roof or overhang that is

enclosed by at least three walls, except that the following will not be considered an Indoor Portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a tent or plastic dome, if it has adequate ventilation to allow for air circulation.

- I. **Non-resident Performer** means a non-resident performing artist, nonresident professional athlete or sports team, or non-resident individual accompanying a performing artist or sports team as part of their regular employment.
- J. **Adult Patron** means an Adult Individual, aged 18 years or older, eligible to Receive a COVID-19 Vaccine who enters, patronizes, attends an event, or purchases goods or services at a Covered Location.
- K. **Photo Identification** means an original or copy of an identification card, including:
 - 1. Driver's license;
 - 2. Government issued identification card;
 - 3. School or work identification card; or
 - 4. Passport.
- L. **Proof of Negative COVID-19 Test** means a printed document, QR code, email, or text message displayed on a phone from a test provider or laboratory that shows results of a polymerase chain reaction (PCR) or antigen COVID-19 test that either has Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services, that was conducted within 72 hours before entry into a Covered Location. The printed document, email, or text message must include the person's name, type of test performed, date of the test, and negative test result.
- M. **Proof of Vaccination** means one of the following demonstrating proof of Full Vaccination:
 - 1. A vaccination card issued by the United States Centers for Disease Control and Prevention (CDC) specific as COVID-19 vaccination, which includes the name of the person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by another foreign governmental agency;
 - 2. A photo of a vaccination card (both sides), compliant with Subsection M.1. above as a separate physical photograph or stored on a phone or electronic device;
 - 3. Documentation of vaccination from a licensed healthcare provider; or
 - 4. A personal digital COVID-19 vaccine record issued by the State of California or similar documentation issued by another state, local, or foreign governmental jurisdiction, or by a private company. This Ordinance urges California residents to visit the State of California's Digital COVID-19 Vaccine Record website at myvaccinerecord.cdph.ca.gov and download a QR Code of their proof of vaccination onto their mobile phone.

Section 3.2. Proof of Vaccination Required For An Adult Patron To Enter the Indoor Portion Of A Covered Location.

- A. Upon this Ordinance's Effective Date, a Covered Location shall display prominently on its premises, visible to Patrons prior to entrance, an advisory notice informing Patrons that Proof of Vaccination is required for Adult Patrons, aged 18 years or

older, to enter any Indoor Portion of a Covered Location.

B. Upon this Ordinance's Effective Date, a Covered Location shall require each Adult Patron, aged 18 years or older, to provide Proof of Vaccination upon entering an Indoor Portion of a Covered Location. A Covered Location is required to cross-check Proof of Vaccination for each Adult Patron against Photo Identification. Subject to the exemptions below, an Adult Patron shall not be permitted to enter an Indoor Portion of a Covered Location without Proof of Vaccination.

1. An Adult Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical condition or restriction or a sincerely held religious belief, as follows.
 - (a) To be eligible for an exemption due to a medical condition or restriction, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a medical condition or restriction that qualifies the Adult Patron for the exemption.
 - (b) To be eligible for an exemption due to a sincerely held religious belief, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a sincerely held religious belief that qualifies the Adult Patron for the exemption.
2. If a Covered Location determines an Adult Patron has met the requirements of an exemption pursuant to this section because of a medical condition or restriction or sincerely held religious belief, the Covered Location shall require the Adult Patron to use the portion of a Covered Location that is not an Indoor Portion. If such use is not available, the Adult Patron may be permitted to enter an Indoor Portion of a Covered location by providing Proof of Negative COVID-19 Test and Photo Identification.
3. An Adult Patron who does not provide Proof of Vaccination and who does not qualify for an exemption may use the portion of a Covered Location that is not an Indoor Portion. An Adult Patron who does not provide Proof of Vaccination may be allowed to enter an Indoor Portion of a Covered Location for brief and limited periods of time to use the restroom, order, pick-up, or pay for food or drink "to go," or perform necessary repairs, provided that the Patron wears a well-fitting mask at all times while in the Indoor Portion of the Covered Location. To the extent feasible, a Covered Location may offer service outside for an Adult Patron who does not provide Proof of Vaccination, including curbside pickup, drive thru delivery, and outdoor seating and dining.
4. A Covered Location may require Proof of Vaccination upon the Adult Patron's first in-person interaction with staff (e.g., at the time of ordering) rather than at the entrance to the establishment, but only if all such patrons wear a well-fitting mask at all times after entering the indoor portion of the facility and before showing such proof.
5. Theaters where concessions are sold may require proof of Full Vaccination to be shown at the time of patrons' purchase of concessions rather than at the entrance to the Covered Location.
6. This section does not apply to a Non-resident Performer, who enters a Covered Location for purposes of performing or competing.

- C. A Covered Location must develop or may use what is provided by the City and keep a written record describing the protocol for implementing and enforcing the requirements of this Ordinance.

Section 3.4 Enforcement and Rules and Regulations.

Violations of this Ordinance are subject to enforcement under Chapter 1-12 of the San Leandro Municipal Code. For any Covered Location or Patron aggrieved by a violation of this Ordinance, any person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the Covered Location or Patron violating this Ordinance. A Covered Location or Patron, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation. Any person or entity enforcing this Ordinance on behalf of the public as provided for under applicable state law, upon prevailing, shall be entitled only to equitable, injunctive, and/or restitution relief, and reasonable attorneys' fees and costs. Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

The City Manager may promulgate and update as necessary rules and regulations consistent with this ordinance for further clarification of its provisions. Any rules or regulations shall have the force and effect of law, and may be relied upon by a Covered Location or Patron to determine their rights and responsibilities under this Ordinance.

Section 3.5 Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article, including its application to other persons or circumstances. The City Council hereby declares that it would have adopted this article and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

Section 3.6 No Conflict with Federal or State Law.

Nothing in this article shall be interpreted so as to create any power or duty in conflict with any state or federal law.

Section 3.7 Sunset.

This ordinance shall sunset at 11:59 p.m. on January 31, 2022 or upon the lifting of the City of San Leandro Proclamation of Emergency that was ratified by the City Council on March 16, 2020, whichever occurs first, unless otherwise amended by the City Council.

SEC. 4 EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.