

## COVID-19 Mandatory Vaccination Ordinance

### Counter Proposal Over Outcomes for Non-Reporting and Non-Compliance

Presented October 12, 2021

#### General Provisions

The procedures described herein shall apply only to corrective action for violations of Ordinance No. 187134 (“COVID-19 Vaccination Requirement For All Current and Future City Employees”) and shall not apply to violations of other City policies or MOU provisions. Any corrective action that results from implementation of these procedures will not be considered in future disciplinary decisions for violations outside of Ordinance No. 187134. Any employee who is terminated for non-compliance with the City’s COVID-19 vaccination requirement shall not be prohibited from seeking reemployment with the City, subject to any COVID-19 vaccination requirement(s).

#### Failure to Report a Vaccination Status

On October 20, 2021, employees shall be categorized into one of two groups, as defined by Ordinance 187134 (“COVID-19 Vaccination Requirements for All Current and Future City Employees”):

1. “Fully Vaccinated”; or,
2. “Partially Vaccinated” or “Unvaccinated”.

#### Non-Compliance with the Vaccination Mandate

Employees shall be deemed non-compliant with the vaccination mandate if they have failed to become fully vaccinated **and** have not filed an intent to seek a medical or religious exemption by October 20, 2021.

An employee who does not submit proof of their full vaccination status by October 20, 2021 and has not submitted a request for exemption will be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements (“Notice”). The Notice will instruct the employee to submit proof of full compliance, i.e., being fully vaccinated, no later than the close of business on Saturday, December 18, 2021. “Full compliance” shall mean having had at least 14 days pass since an employee received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson).

The following terms (1 – 6 below) shall apply to an employee who is not fully vaccinated and who has received a Notice.

1. An employee shall assume responsibility for using their own compensated time to manage an absence from the workplace due to COVID-19 infection or exposure. This does not preclude an employee from filing a claim for workers’ compensation benefits, as appropriate.

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2. The employee must test for COVID-19 twice per week.
3. To facilitate the testing process for the employee and ensure that test results are reported accurately and timely, all testing shall be administered by the City or a vendor of its choosing. The employee shall be required to test through the City or a vendor of its choosing. No third-party tests shall be substituted for tests provided for by the City or the vendor of its choosing.
4. The employee shall reimburse the City \$260 per pay period for four test at \$65 each. Reimbursement shall be made on a biweekly basis through an employee's paycheck, e.g., through a negative deduction.
5. The employee shall test on their own time, i.e., not on paid work time.

If an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to disciplinary action. For sworn employees who proceed to a Board of Rights, the City will comply with all applicable Charter and other legal requirements.

At any time during the process an employee decides, in lieu of being vaccinated, to resign, retire, or, in the case of sworn personnel who are currently enrolled in the Deferred Retirement Option Program (DROP), exit DROP, the employee may show proof of filing resignation, retirement, or DROP exit paperwork with a date certain to their appointing authority, at which time they shall remain out of the workplace until such date. From the time that the employee provides proof of intended resignation, retirement, or DROP exit and the date of the actual date of occurrence, the employee may use one of three types of time available to them in order to remain on active payroll, including and limited to: (1) accrued vacation time; (2) compensated time off, e.g., banked overtime; or, (3) Leave Without Pay.

#### **Exemptions from the Vaccination Mandate**

Employees who file exemption paperwork on or before October 20, 2021, will be considered compliant with the Ordinance during the pendency of the exemption and accommodation process. Accordingly, the City shall not issue the Notice and/or take employment action against an employee who is duly subject to the exemption and accommodation procedures.

Employees who have reported a vaccination status of "not vaccinated" and who file exemption paperwork and are awaiting the result of the City's evaluation process shall be subject to the same terms applicable to employees who are not fully vaccinated and who

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have received a Notice or are not fully vaccinated, including and limited to items 2, 3, 4, and 5 as stated above.

If an employee who reported a vaccination status of “not vaccinated” and who filed for an exemption is ultimately granted that exemption by the City, then the City shall reimburse the employee for the reimbursement costs for testing as required above.

Exemption Approval: An approved exemption may be based on a disability, medical condition or a sincerely held religious belief. An approved deferral exemption may be based on a recent COVID-19 diagnosis or treatment. If an employee’s exemption is approved, the employee must register with Bluestone for testing at (a website to be provided) and adhere to the City’s COVID-19 Workplace Safety Standards. In addition, the employee must adhere to all workplace screening requirements and safety protocols when in a City facility or work location and/or when in contact with other City employees or members of the public while working. They must also comply with any reasonable accommodations that result from good faith, interactive discussions, as applicable.

Employees who are granted a medical deferral based upon on a recent COVID-19 diagnosis or treatment shall be granted up to a ninety (90) day period of time to fully recover prior to being required to be vaccinated or enroll for the twice-weekly testing as stated herein. The ninety (90) day period of time shall begin the day after the first negative test following the initial positive test results.

Exemption Denial: If an employee’s exemption request is denied, the employee may appeal the determination to the employee’s appointing authority within five (5) business days of the date of the notice of the denial. The employee may amend their application to address written reasons for the denial. The appointing authority will review and decide on the appeal request which will be sent without identifying information that would lead to the identity of the employee.

If an exemption appeal is denied or an employee does not file an appeal within five (5) business days of the date of the denial, the employee shall be issued a Notice of Mandatory COVID-19 Vaccination Policy Requirements and may choose to resign, retire, or exit DROP, all in good standing in lieu of discipline (as described above), or comply with the following timelines to be in compliance with the vaccination mandate.

1. Within fourteen (14) calendar days from the notice of denial of their exemption or expiration date of their medical deferral, the employee shall submit proof that they have received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. During this time, the employee continues to work and shall be required to test twice weekly.

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This proof of vaccination must include the date that the employee received the vaccination.

2. The employee will have no more than twenty-eight (28) calendar days from the date of having received the first dose of a COVID-19 vaccine of a two-dose regimen to receive the second dose of a two-dose vaccine regimen.
3. The employee must update their vaccination status within no more than five (5) business days from the date of having received the second dose of a two-dose vaccine regimen by submitting proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof is due on the next business day.

Expiration of Exemption or Deferral: If an employee's exemption or deferral approval has an end date and the employee no longer qualifies for exemption, the employee shall adhere to the same processes and procedures as outlined above for Exemption Denial.

#### **Separation from City Service**

An employee who elects to resign during any time in this process shall do so in good standing in lieu of discipline.

If employees who resign or are terminated become vaccinated for COVID-19 subsequent to their separation from City service or if the mandatory vaccination order is lifted, these employees will be eligible for rehire in the same classification in which they had standing immediately prior to their separation from City service.

#### **Additional Provisions**

If the City Council determines that the safety protocols and measures instituted around and to address the COVID-19 pandemic as contained in the Ordinance are no longer necessary to preserve the health, safety, and wellbeing of the City's workforce and the public it serves, the City Council shall suspend the provisions of the Ordinance.

From October 20 through December 18, 2021, the City shall increase efforts to educate the City's workforce on the benefits of the COVID-19 vaccination.