

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: January 18, 2023

To: The City Council

From: Matthew W. Szabo, City Administrative Officer



Subject: **UPDATES TO THE MANDATORY VACCINATION ORDINANCE (ORD. NO. 187134) AND IMPLEMENTING PROCEDURES (CF# 21-0921)**

RECOMMENDATIONS

The Office of the City Administrative Officer (CAO) recommends that the City Council adopt the attached Resolution Discontinuing COVID-19 Surveillance Testing Requirements Implemented Pursuant to Ordinance 187134 ("COVID-19 Vaccination Requirement For All Current and Future City Employees").

DISCUSSION

As instructed by the Executive Employee Relations Committee (EERC), this Office issued the COVID-19 Mandatory Vaccination Ordinance Last, Best, and Final Offer (LBFO) Over Outcomes for Non-Reporting and Non-Compliance to all labor unions on October 14, 2021. The document outlined COVID-19 testing requirements for unvaccinated employees who were seeking and the process by which they were able to seek an exemption from the City's COVID-19 Vaccination Requirement for all Current and Future City Employees ordinance (No. 187134). After bargaining occurred, the City Council adopted and implemented the tenets of the LBFO by resolution on October 28, 2021.

Adopted more than one year ago at the height of the pandemic, the City's LBFO and related resolution were designed to align the City's procedures with advice and guidance provided by reputable health organizations, such as the Center for Disease Control, and with public health rules promulgated by the County of Los Angeles and State of California Departments of Public Health (DPH). The City has consistently followed health and safety actions taken by the County DPH, e.g., relaxation of mask mandates for visitors and employees in public buildings.

On February 11, 2022, the EERC authorized changes to the City's LBFO regarding the testing of unvaccinated employees to address operational and cost constraints. The changes included:

1. Reducing the frequency of employee testing from twice to once per week.
2. Reducing the number of test drop-off site locations to facilitate, centralize, and streamline testing operations.
3. Permitting employees to test through a vendor of their choosing on their own time and present test results to their department.

The first change was adopted immediately, thereby reducing expenditures associated with the City's contract with Bluestone for testing unvaccinated employees. However, to date the City has spent approximately \$6.5MM on the Bluestone contract, primarily to cover the cost of testing unvaccinated employees.

The second change did not materialize because departments expressed concerns over adverse impacts to operations by requiring employees to spend time traveling to centralized location other than their designated work site to test.

The third change adopted by the EERC spurred a legal challenge from the Los Angeles Police Protective League (LAPPL) based on the claim that California Labor Code Section 2802 requires employers to reimburse employees for all necessary expenditures or losses incurred by the employee directly related to the discharge of their duties. A subsequent court ruling supported the LAPPL argument that the City must provide paid City time to test regardless of the vendor and must cover all expenses related to testing.

Effective October 1, 2022, Los Angeles County stopped its COVID-19 surveillance-testing requirement for unvaccinated employees but has continued testing for exposure or where a symptomatic employee seeks to return to work. In advance of that action on September 30, 2022, the EERC approved a recommendation to eliminate the City's requirement for surveillance testing and rely on the County's testing infrastructure for exposure and symptomatic testing.

In light of the public health and safety policy changes taken by County DPH and the court ruling against the City on the LAPPL's lawsuit, this Office recommends adoption of the attached resolution that would end COVID-19 surveillance testing for unvaccinated employees and codify direction adopted by the EERC as noted herein.

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Attachment