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Superior Court of California,  
County of San Francisco

**10/21/2021**  
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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**

13 UNITED SF FREEDOM  
ALLIANCE, BHANU VIKRAM,  
14 CARSON ROBERT SCHILLING,  
CHRISTA L. FESTA,  
15 CHRISTIANNE T. CROTTY,  
CYNTHIA WHEELER, DENNIS  
16 CALLAHAN, FAIMING CHEUNG,  
and JESSICA KWOK-BO LINDSEY

17 Plaintiffs,

18 v.

19 CITY AND COUNTY OF SAN  
20 FRANCISCO, a municipal  
corporation and administrative  
21 division of the State of California,  
CAROL ISEN, in her individual  
22 capacity and in her official capacity as  
the Human Resources Director of the  
23 City and County of San Francisco,  
SUSAN PHILIP in her individual  
24 capacity and in her official capacity as  
the Health Officer of the City and  
25 County of San Francisco, JEANINE  
R. NICHOLSON in her individual  
26 capacity and in her official capacity as  
the Chief of Department of the San  
27 Francisco Fire Department, PHILLIP  
A GINSBURG. in his individual

Case No.:

**CGC-21-595642**

**COMPLAINT FOR VIOLATION OF  
CIVIL RIGHTS AND DECLARATORY  
AND INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

1 capacity and his official capacity as  
2 the General Manager for the San  
3 Francisco Recreation and Parks,  
4 KIMBERLY ACKERMAN, in her  
5 individual capacity and her official  
6 capacity as the Chief People Officer  
7 for the San Francisco Municipal  
8 Transportation Agency, FABIAN  
9 PEREZ, in his individual capacity and  
10 his official capacity as an  
11 administrator in the San Francisco  
12 Sheriff’s Office, WILLIAM SCOTT,  
13 in his individual capacity and his  
14 official capacity as Chief of the Police  
15 for the San Francisco Police  
16 Department. and Does 1 through 100,  
17 inclusive,

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Defendants.

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12 Plaintiffs, UNITED SF FREEDOM ALLIANCE, BHANU VIKRAM, CARSON  
13 ROBERT SCHILLING, CHRISTA L. FESTA, CHRISTIANNE T. CROTTY,  
14 CYNTHIA WHEELER, DENNIS CALLAHAN, FAIMING CHEUNG, JESSICA  
15 KWOK-BO LINDSEY, by and through their undersigned counsel, sue Defendants,  
16 CITY AND COUNTY OF SAN FRANCISCO (“City”), a municipal corporation and  
17 administrative division of the State of California, CAROL ISEN, in her individual  
18 capacity and in her official capacity as the Human Resources Director of the City,  
19 SUSAN PHILIP in her individual capacity and in her official capacity as the Health  
20 Officer of the City and County of San Francisco, JEANINE R. NICHOLSON in her  
21 individual capacity and in her official capacity as the Chief of Department of the San  
22 Francisco Fire Department, PHILLIP A GINSBURG, in his individual capacity and his  
23 official capacity as the General Manager for the San Francisco Recreation and Parks,  
24 KIMBERLY ACKERMAN, in her individual capacity and her official capacity as the  
25 Chief People Officer for the San Francisco Municipal Transportation Agency, FABIAN  
26 PEREZ, in his individual capacity and his official capacity as an administrator in the  
27 San Francisco Sheriff’s Office, WILLIAM SCOTT, in his individual capacity and his

1 official capacity as Chief of the Police for the San Francisco Police Department, and  
2 Does 1 through 100, inclusive, and allege as follows:

3 **INTRODUCTION**

4 1. On June 23, 2021, the City issued a “COVID-19 Vaccination Policy”  
5 requiring that all employees be vaccinated against SARS-CoV-2, the virus that causes  
6 COVID-19 (“COVID”).

7 2. The City’s COVID-19 Vaccination Policy was amended on August 6,  
8 2021, and again thereafter on September 8, 2021. The City’s COVID-19 Vaccination  
9 Policy as amended is hereinafter referred to as the “Mandate.” Attached hereto as  
10 Exhibit “A” is a true and correct copy of the Mandate.

11 3. The Mandate applies all “employees,” which it defines therein to include  
12 full-time, part-time, and as-needed City employees regardless of appointment type.

13 4. The “Purpose Statement” portion of the Mandate provides that:  
14 “Vaccination is the most effective way to prevent transmission and limit COVID-19  
15 hospitalizations and deaths.”

16 5. The Director for the Centers for Disease Control (“CDC”), however, has  
17 stated that vaccines do not prevent infection with, or transmission of, the Delta variant,  
18 advising: “[W]hat the [vaccines] can’t do anymore is prevent transmission.<sup>1</sup>

19 6. Plaintiffs have been notified that if they fail to comply with the various  
20 deadlines specified in the Mandate for reporting their vaccination status to the City, and  
21 becoming fully vaccinated, they will be forbidden from returning to work, placed on  
22 administrative leave, and terminated.

23 7. The Mandate does not allow for COVID-19 testing as an alternative to  
24 vaccination.

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27 <sup>1</sup> <https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html>, see also The New England Journal of  
28 Medicine, Resurgence of SARS-CoV-2 Infection in a Highly Vaccinated Health System Workforce (September 30, 2021).

- 1           8.     Plaintiffs assert the Mandate cannot be supported when:
- 2           i.     Over 99.8% of all those with COVID survive.
- 3           ii.    Those who survive obtain robust and durable natural immunity.
- 4           iii.   The natural immunity so obtained is superior to COVID vaccine-
- 5           induced immunity.
- 6           iv.    The COVID vaccines are ineffective against the Delta strain of COVID,
- 7           which the CDC states is the dominant (>99%) strain throughout the
- 8           United States.
- 9           v.     The CDC acknowledged that the vaccinated and unvaccinated are
- 10          equally likely to spread the virus.<sup>2</sup>
- 11          vi.    The vaccines only reduce symptoms of those who contract COVID, but
- 12          not transmission of the virus. They are, therefore, treatments, and not
- 13          vaccines as that term has always been defined in the law.
- 14          vii.   The CDC changed its definitions of “vaccine in August 2021. The CDC
- 15          formerly described vaccination as “the act of introduction a vaccine into
- 16          the body to produce immunity to a specific disease.” The definition has
- 17          since been changed and now reads: “the act of introducing a vaccine
- 18          into the body to produce protection to a specific disease.”<sup>3</sup>
- 19          viii.   This is a critical factual and legal distinction. Legal authority to
- 20          mandate medical treatment only derives under public health
- 21          regulations. As the CDC holds that Delta is the only strain; that the
- 22          shots do not stop the transmission of Delta; and that vaccination is mere
- 23          “protection” against a disease and not “immunity” against the disease;
- 24          claiming there is a public health mandate is fallacious.

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27 <sup>2</sup> [https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s\\_cid=mm7031e2\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w)

28 <sup>3</sup> <https://web.archive.org/web/20210826113846/https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>



1 the SFPD.

2 13. Plaintiff CHRISTIANNE T. CROTTY is, and at all times relevant hereto  
3 was, a citizen of San Francisco County and employed by the City as a Sheriff Deputy  
4 for the San Francisco Sheriff’s Office (“SFSO”).

5 14. Plaintiff CYNTHIA WHEELER is, and at all times relevant hereto was, a  
6 citizen of San Francisco County and employed by the City as a plumber for the San  
7 Francisco Recreation and Parks (“SFRP”).

8 15. Plaintiff DENNIS CALLAHAN is, and at all times relevant hereto was, a  
9 citizen of Contra Costa County and employed by the City as a Track Maintenance  
10 Worker Supervisor I for the SFMTA.

11 16. Plaintiff FAIMING CHEUNG is, and at all times relevant hereto was, a  
12 citizen of San Francisco County and employed by the City as a an IT Operations Support  
13 Administrator III for the San Francisco Department of Emergency Management  
14 (“SFDEM”).

15 17. Plaintiff JESSICA KWOK-BO LINDSEY is, and at all times relevant  
16 hereto was, a citizen of Mendocino County and employed by the City as a Fire Fighter  
17 for the San Francisco Fire Department (“SFFD”).

18 18. Defendant City is, and at all time relevant hereto was, the Plaintiffs’  
19 employer and issuer of the Mandate via its Department of Human Resources.

20 19. Defendant CAROL ISEN (“Isen”) is, and at all times relevant hereto was,  
21 the Human Resources Director of the City. Isen is ultimately charged with among other  
22 things enforcing all employment policies of the City, including without limitation the  
23 Mandate. Isen is being sued in her official and individual capacities.

24 20. SUSAN PHILIP (“Philip”) is, and at all times relevant hereto was, the  
25 Health Officer of the City, responsible for the Safer-Return-Together Order, as  
26 amended, which is referenced in, and informs, the Mandate and deadlines set forth  
27 therein.







1           31. On January 31, 2020, President Trump first issued a public health state of  
2 emergency in the United States under the Public Health Service Act due to COVID.

3           32. Also on January 31, 2020, Secretary of Health and Human Services Alex  
4 M. Azar II, issued a Declaration of a Public Health Emergency effective as of January  
5 27, 2020. This declaration has been renewed thereafter on April 21, 2020, July 23, 2020,  
6 October 2, 2020, January 7, 2021, April 15, 2021, and July 19, 2021.

7           33. President Trump issued a subsequent declaration of emergency under the  
8 Stafford Act and National Emergencies Act on March 13, 2020, due to COVID.

9           34. A third declaration of emergency was issued by President Trump on March  
10 18, 2020, under the Defense Production Act due to COVID.

11           35. On February 24, 2021, President Biden extended President Trump’s March  
12 13, 2020 declaration of emergency, stating as a reason for doing so that more “than  
13 500,000 people in this Nation have perished from the disease.”<sup>4</sup>

14           36. Thus, the United States has been in a constant state of emergency due to  
15 COVID (the “COVID Emergency”) since January 31, 2020, a period of over twenty  
16 months.

17           37. The COVID Emergency has been used to justify lockdowns, banning of  
18 worship services, mandatory masks, vaccine passports, and now mandatory  
19 vaccinations such as the vaccination requirement the Defendants has placed on each of  
20 its employees upon penalty of termination.

21           38. Never in this history of this nation have its citizens been subjected to such  
22 invasions of their individual rights and liberties.

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26 <sup>4</sup> President Joseph R. Biden, Jr., *Notice on the Continuation of the National Emergency Concerning the Coronavirus*  
27 *Disease 2019 (COVID-19) Pandemic* (February 24, 2021), [https://www.whitehouse.gov/briefing-room/presidential-](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/)  
28 [actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/)  
[covid-19-pandemic/](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/).

1           39. In April 2020, the national Administration announced Operation Warp  
2 Speed (“OWS”) – a public/private partnership to develop and distribute a vaccine for  
3 COVID-19 by the end of 2020 or early 2021.

4           40. The process for developing a vaccine normally takes place in several  
5 phases, over a period of years.

6           41. The general stages of the development cycle for a vaccine are:

- 7                   i. Exploratory stage;
- 8                   ii. Pre-clinical stage (animal testing);
- 9                   iii. Clinical development (human trials – see below);
- 10                  iv. Regulatory review and approval;
- 11                  v. Manufacturing; and

12 Quality control.<sup>5</sup>

13           42. The third stage, clinical development, is itself a three-phase process:

- 14                   i. During Phase I, small groups of people receive the trial vaccine.
- 15                   ii. In Phase II, the clinical study is expanded and vaccine is given to  
16 people who have characteristics (such as age and physical health)  
17 similar to those for whom the new vaccine is intended.
- 18                   iii. In Phase III, the vaccine is given to thousands of people and  
19 tested for efficacy and safety.

20           43. Phase III itself normally occurs over a course of years. That is because it  
21 can take years for the side effects of a new vaccine to manifest themselves.

22           44. Phase III must be followed by a period of regulatory review and approval.  
23 During this stage, data and outcomes are reviewed by peers and by the FDA.

24           45. Finally, the manufacturer must demonstrate that the vaccine can be  
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26 \_\_\_\_\_  
27 <sup>5</sup> <https://www.cdc.gov/vaccines/basics/test-approve.html>.

1 manufactured under conditions that assure adequate quality control.

2 46. The timeline set by OWS telescoped what would normally take years of  
3 research into a matter of months.

4 47. Commercial vaccine manufacturers and other entities proceeded with  
5 development of COVID-19 vaccine candidates using different technologies including  
6 RNA, DNA, protein, and viral vectored vaccines.

7 48. Two potential vaccines emerged early on as likely candidates: one  
8 developed by Moderna (the “Moderna Vaccine”), the other by Pfizer (the “Pfizer  
9 Vaccine”), with both announcing Phase III trial results in November 2020.

10 49. In early 2021, Janssen Biotech, Inc. submitted Phase III trial results for its  
11 adenovirus vector vaccine (the “Janssen Vaccine”).

12 50. In order for a new vaccine to be approved in the normal course, the  
13 manufacturer must submit an application to the FDA pursuant to section 505(b) of the  
14 Food, Drug, and Cosmetics Act, encoded at 21 U.S.C. § 355(b) (the “FDCA”). None  
15 of the currently-available COVID Vaccines, including the Moderna and Pfizer Vaccines  
16 that have been acquired and are being administered to LAUSD employees, has been  
17 approved by the FDA.

18 51. Rather, the COVID Vaccines have been authorized for emergency use  
19 under § 564 of the FDCA (encoded at 21 U.S.C. § 360bbb-3), which Congress enacted  
20 to vest the Secretary of Health and Human Services with permissive authority to  
21 “authorize the introduction into interstate commerce, during the effective period of a  
22 declaration [of emergency], of a drug, device, or biological product intended for use in  
23 an actual or potential emergency. . . .” 21 U.S.C. § 360bbb-3(a)(1).

24 52. The statute provides for the authorization of both unapproved products and  
25 unapproved uses of an approved product. See 21 U.S.C. § 360bbb-3(a)(2). The Vaccines  
26 fall under the former category, as they have not been previously approved for any use,  
27 nor have they been approved to date.

1           53. Section 360bbb-3 mandates the following conditions for authorization of  
2 an unapproved product:

3           . . . [T]he Secretary, to the extent practicable given the  
4 applicable circumstances described in subsection (b)(1),  
5 *shall*, for a person who carries out any activity for which the  
6 authorization is issued, establish such conditions on an  
7 authorization under this section as the Secretary finds  
8 necessary or appropriate to protect the public health,  
9 including the following:

10           . . . (ii) Appropriate conditions *designed to ensure* that  
11 *individuals to whom the product is administered are*  
12 *informed*—

13           . . . (iii) *of the option to accept or refuse administration of*  
14 *the product. . . .*

15  
16 21 U.S.C. § 360bbb-3(e)(1)(A)(ii) (emphasis added).

17           54. Pfizer and Moderna were granted EUAs for their vaccines under Section  
18 360bbb-3 in December 2020. The FDA granted Janssen an EUA for its vaccine in  
19 February 2021.

20           55. Consistent with its mandate under Section 360bbb-3, the FDA has  
21 continued to refer to Vaccines for which EUAs have been granted as “unapproved” or  
22 “investigational” products.

23           56. In other words, as a legal matter and as a matter of FDA policy and  
24 guidance, the EUA Vaccines remain experimental.

25           57. More recently, the FDA has licensed the Pfizer-Biontech vaccine under the  
26 brand name, “Comirnaty.” However, on information and belief, the licensed  
27 “Comirnaty” vaccine is not yet available in the United States, and all currently-available  
28

1 COVID Vaccine doses were manufactured and distributed under an EUA. In other  
2 words, on information and belief Plaintiffs are being mandated to receive administration  
3 of a vaccine that remains experimental.

## 4 COVID-19 Is Not Smallpox

### 5 A. The Statistics Underlying Defendants’ Justification for the Mandate 6 Are Flawed

#### 7 i. The PCR Test Is Flawed

8 58. The Covid Emergency is based upon statistics that are flawed for at least  
9 the following reasons:

- 10 i. Every statistic regarding COVID is based upon the PCR test, which is  
11 a limited test that cannot, on its own, determine whether a test subject  
12 is infected with COVID absent an examination by a medical doctor;
- 13 ii. The PCR test is highly sensitive, with the result of the test being  
14 dependent upon the cycle threshold (“CT”) at which the test is  
15 conducted;
- 16 iii. National Institute of Allergy and Infectious Diseases, Dr. Anthony  
17 Fauci, has stated that a test conducted at a CT of over 35 is useless;<sup>6</sup>
- 18 iv. Studies have confirmed Dr. Fauci’s conclusion, showing that tests  
19 conducted using CT values over 35 have yielded up to eighty percent  
20 (80%) false positives;<sup>7</sup>

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23 <sup>6</sup> YouTube.com, *Dr. Tony Fauci - PCR cycles* (October 30, 2020), <https://www.youtube.com/watch?v=A867t1JbIrs>; see  
24 NYTimes.com, *Your Coronavirus Test Is Positive. Maybe It Shouldn’t Be*. August 29, 2020),  
<https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>.

25 <sup>7</sup> Corman-Drosten Review Report, *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major*  
26 *scientific flaws at the molecular and methodological level: consequences for false positive results*, Section 3 (November  
27 27, 2020), <https://cormandrostenreview.com/report/>; see *The Lancet Clarifying the evidence on SARS-CoV-2 antigen*  
28 *rapid tests in public health responses to COVID-19* (February 17, 2021), (“This suggests that 50–75% of the time an  
individual is PCR positive, they are likely to be post-infectious.”),  
[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00425-6/fulltext#%20](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00425-6/fulltext#%20); DOI:  
[https://doi.org/10.1016/S0140-6736\(21\)00425-6](https://doi.org/10.1016/S0140-6736(21)00425-6);

- 1 v. Despite this known sensitivity, the PCR tests were mass distributed in  
2 the United States without training, were used by technicians who were  
3 not made aware of the underlying flaw in the test,<sup>8</sup> and were operated  
4 at a CT value in excess of 35 routinely, therefore, delivering results that  
5 were, according to Dr. Fauci and a broad consensus of experts in the  
6 area, useless;<sup>9</sup> and
- 7 vi. The PCR test is incapable of distinguishing a live particle of a virus  
8 from a dead one, and as a result, even a positive test result does not  
9 mean that the test subject is infected or contagious with COVID,  
10 analogous to a test that could identify car parts (such as an axle, wheels,  
11 engine) but not determine if those car parts were in fact, a working car.

12 **ii. The Asymptomatic Spreader is a Myth**

13 59. Due to the numerous flaws in the fundamental test upon which all statistics  
14 underlying the COVID Emergency are based, and the high level of resulting false  
15 positives, many have incorrectly concluded that asymptomatic people, who in the past  
16 would simply have been referred to as “healthy people,” are somehow contagious and  
17 are spreading the disease.

18 60. Policy decisions at the state and federal level rest upon this myth. For  
19 example, mandatory masking of healthy people is based upon this myth. Social  
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22 *see also* <https://www.aerztezeitung.de/Wirtschaft/80-Prozent-der-positiven-Corona-Schnelltests-falsch-positiv-421053.html> (July 4, 2020), (The fact that the high rate of false positive tests in large-scale testing in the population occurs at a time of low viral incidence is demonstrated in the article from the German *Ärztezeitung*. At the end of the regular cold season (May), about 50% of rapid tests were already reported as false positive, and this rate increased until it reached 80% false positive tests in June.); *compare* *Comparison of seven commercial SARS-CoV-2 rapid point-of-care antigen tests: a single-centre laboratory evaluation study* (July 2021), (“false-positives do occur with AgPOCTs at a higher rate than with RT-rtPCR.”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8026170/>. DOI: [10.1016/S2666-5247\(21\)00056-2](https://doi.org/10.1016/S2666-5247(21)00056-2).

26 <sup>8</sup> NPR *CDC Report: Officials Knew Coronavirus Test Was Flawed But Released It Anyway* (November 6, 2020), <https://www.npr.org/2020/11/06/929078678/cdc-report-officials-knew-coronavirus-test-was-flawed-but-released-it-anyway>.

27 <sup>9</sup> YouTube.com, *Dr. Tony Fauci - PCR cycles* (October 30, 2020), <https://www.youtube.com/watch?v=A867t1JbIrs>.

1 distancing is based upon this myth as well. The policy that perfectly healthy, non-  
2 contagious people must be vaccinated to interact with and participate in society is based  
3 in large degree upon this myth. With regard to flawed statistics, mass PCR testing of  
4 the entire population has been based upon this myth.<sup>10</sup> There is no reason to test  
5 perfectly healthy asymptomatic people absent the belief that asymptomatic people can  
6 spread COVID.

7 61. However, the assumption that people with no symptoms can spread the  
8 disease is false. As Dr. Fauci stated during a September 9, 2020: “[E]ven if there is  
9 some asymptomatic transmission, in all the history of respiratory borne viruses of any  
10 type, asymptomatic transmission has never been the driver of outbreaks. The driver of  
11 outbreaks is always a symptomatic person, even if there is a rare asymptomatic person  
12 that might transmit, an epidemic is not driven by asymptomatic carriers.”<sup>11</sup>

13 62. Due to the incorrect assumption that asymptomatic people could spread  
14 the disease, mass testing has been instituted of the population at large. Due to the  
15 numerous flaws in the PCR test stated above, this mass testing has resulted in  
16 dramatically inflated case numbers that do not reflect reality and falsely overstate the  
17 number of COVID cases.

18 63. As a result, the data regarding COVID cases being used to shape public  
19 policy is highly inflated.

20 **iii. The COVID Hospitalization Count Is Highly Inflated**

21 64. Every patient that is admitted to a hospital is subject to a PCR test due to  
22 the perceived COVID Emergency.

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25 <sup>10</sup> Corman-Drosten Review Report, *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major*  
26 *scientific flaws at the molecular and methodological level: consequences for false positive results.* (November 27, 2020),  
<https://cormandrostenreview.com/report/>.

27 <sup>11</sup> <https://www.bmj.com/content/371/bmj.m4695> and YouTube.com, *Update on the New Coronavirus Outbreak First*  
28 *Identified in Wuhan, China | January 28, 2020* (January 28, 2020).  
<https://www.youtube.com/watch?v=w6koHkBCoNQ&t=2638s>.

1           65. The PCR test used upon admission is subject to the numerous flaws  
2 identified above, and, therefore, results in the dramatic inflation of COVID patients who  
3 have been hospitalized.

4           66. Moreover, the CARES Act increases reimbursements to hospitals for all  
5 patients who have been diagnosed with COVID, creating an economic incentive for  
6 hospitals to find a COVID diagnosis.

7           67. As a result, the COVID hospitalization data being used to shape public  
8 policy is highly inflated.

9                   **iv. The COVID Death Count Is Highly Inflated**

10           68. On March 24, 2020, the CDC issued COVID Alert Number 2.12 This Alert  
11 substantially changed how the cause of death was to be recorded exclusively for  
12 COVID. The modification ensured that in any case where the deceased had a positive  
13 PCR test for COVID, then COVID was listed as the cause of death.13

14           69. Prior to this March 24, 2020, change in procedure, COVID would only  
15 have been listed as the cause of death in those cases where COVID was the actual cause  
16 of death. If the deceased had a positive PCR test for COVID, but had died of another  
17 cause, then COVID would have been listed as a contributing factor to the death, but not  
18 the cause.14

19           70. The 2003 CDC Medical Examiner’s and Coroner’s Handbook on Death  
20 Registration and Fetal Death Reporting states that in the presence of pre-existing  
21 conditions infectious disease is recorded as the contributing factor to death, not the  
22 cause.15 This was always the reporting system until the death certificate modification  
23

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24  
25 <sup>12</sup> National Vital Statistics System, *COVID-19 Alert No. 2* (March 24, 2020),  
<https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>.

26 <sup>13</sup> *Id.*

27 <sup>14</sup> *Id.*

28 <sup>15</sup> Medical Examiners’ and Coroners’ Handbook on Death Registration and Fetal Death Reporting, 2003 Revision. CDC, 2003. [https://www.cdc.gov/nchs/data/misc/hb\\_me.pdf](https://www.cdc.gov/nchs/data/misc/hb_me.pdf).



1 issued by the CDC on March 24, 2020.<sup>16</sup>

2 71. This death certificate modification by the CDC was not made for any other  
3 disease; only COVID. Accordingly, a double standard was created for the recordation  
4 of deaths, skewing the data for all deaths after March 24, 2020, reducing the number of  
5 deaths from all other causes, and dramatically increasing the number of deaths attributed  
6 to COVID.

7 72. As a result, the COVID death data used to shape public health policy is  
8 significantly inflated.<sup>17</sup>

9 **v. COVID Has an Extremely High Survivability Rate**

10 73. According to the CDC the survivability of COVID-19 is extraordinarily  
11 high. Survival rates under age 20 is 99.997%, 20-50 is 99.98%, 50-70 is 99.5% and 70+  
12 is 94.6%. These figures calculate the percentage of confirmed COVID infected patients  
13 who survive.

14 74. By comparison, the smallpox epidemic of the early 1900s is reported to  
15 have been fatal to over 30% of those who contracted it, according to the FDA.<sup>18</sup>

16 **vi. COVID Survivors Enjoy Robust Natural Immunity**

17 75. Those who recover from infection from COVID, over 99% of those who  
18 are infected, enjoy robust and durable natural immunity. Natural immunity is superior  
19 to vaccine-induced immunity resulting from the COVID vaccines, which do not prevent  
20

21  
22 <sup>16</sup> National Vital Statistics System, *COVID-19 Alert No. 2* (March 24, 2020),

23 <https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>.

24 <sup>17</sup> CDC, *COVID-19 Forecasts: Deaths* (last accessed September 30, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasting-us.html>

25 <sup>18</sup> See CDC, *History of Smallpox*, (“On average, 3 out of every 10 people who got it died.”),

26 <https://www.cdc.gov/smallpox/history/history.html>; see also AMNH.org, SMALLPOX,

27 <https://www.amnh.org/explore/science-topics/disease-eradication/countdown-to-zero/smallpox>; but see NCBI.gov., *Remaining Questions about Clinical Variola Major*, (“Evidence has shown that the death rate from smallpox among pregnant women was extraordinarily high. Pregnant women had a higher rate of hemorrhagic disease than did other adults. Approximately 16% of cases in unvaccinated pregnant women were early hemorrhagic smallpox versus ≈1% in nonpregnant women and adult males. The case-fatality rate in unvaccinated pregnant women approached 70%. Fetal wastage approached 80%.”) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3377426/>

1 re-infection or transmission of COVID, and do not prevent infection, re-infection or  
2 transmission of the current Delta strain.

3 **B. Mandating COVID Vaccination Is Contrary to Public Policy.**

4 76. As the CDC tacitly concedes by changing its own definitions of “Vaccine”  
5 and “Vaccination,” the COVID vaccines are not vaccines in the traditional sense. For  
6 example, the FDA classifies them as “CBER-Regulated Biologics” otherwise known as  
7 “therapeutics” which falls under the “Coronavirus Treatment Acceleration Program.”<sup>19</sup>

8 77. The Vaccines are misnamed since they do not prevent either re-infection  
9 or transmission of the disease, the key elements of a vaccine. The CDC has publicly  
10 stated that the Vaccines are effective in reducing the severity of the disease but not  
11 infection, re-infection, or transmission. Indeed, as noted above, the CDC has stricken  
12 the very word “immunity” from its definitions of “Vaccine” and “Vaccination.” The  
13 injection is therefore a treatment, not a vaccine.

14 78. The current strain of COVID is the Delta strain.<sup>20</sup> The CDC Director has  
15 stated that the vaccines do not stop the transmission of the Delta strain. Studies show  
16 the Delta strain passes easily amongst vaccinated persons.<sup>21</sup> The CDC website states:  
17 “... preliminary evidence suggests that fully vaccinated people who do become infected  
18 with the Delta variant can spread the virus to others.”<sup>22</sup>

19 79. The effectiveness of the COVID vaccines has been determined to wane  
20 rapidly. Israel, the most vaccinated and studied nation, now expires the vaccine’s  
21 effectiveness at six months.<sup>23</sup> The requirement for booster shots due to this waning of  
22

23  
24 <sup>19</sup> FDA, *Coronavirus (COVID-19) | CBER-Regulated Biologics*, <https://www.fda.gov/vaccines-blood-biologics/industry-biologics/coronavirus-covid-19-cber-regulated-biologics>; FDA, *Coronavirus Treatment Acceleration Program (CTAP)*, <https://www.fda.gov/drugs/coronavirus-covid-19-drugs/coronavirus-treatment-acceleration-program-ctap>.

25 <sup>20</sup> CDC, *Variant Proportions* (last accessed September 30, 2021), <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

26 <sup>21</sup> The Lancet, *Transmission of SARS-CoV-2 Delta Variant Among Vaccinated Healthcare Workers, Vietnam* (August 10, 2021) <https://ssrn.com/abstract=3897733>

27 <sup>22</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

28 <sup>23</sup> <https://www.businessinsider.com/israel-vaccine-pass-to-expire-after-6-months-booster-shots-2021-9>

1 effectiveness has been recognized by the CDC, which initially recommended no booster  
2 shots, then annually, then at 8 months and then 6 months.

3 **C. VAERS Reports Point to Significant Levels of Vaccine Injury.**

4 80. As part of the 1990 Public Readiness and Emergency Preparedness Act,  
5 the FDA and CDC created the Vaccine Adverse Event Reporting System (“VAERS”)  
6 to receive reports about suspected adverse events that may be associated with vaccines.  
7 VAERS is intended to serve as an early warning system to safety issues.

8 81. It has been well established even prior to COVID that only 1-10% of  
9 adverse events are reported.<sup>24</sup> This is known as the “Under-Reporting Factor”  
10 (“URFs”). While many reported adverse events are mild, about 15% of total adverse  
11 events are found to be serious adverse events.<sup>25</sup>

12 82. The long-established CDC database VAERS demonstrates significantly  
13 higher reports of deaths and adverse events with the COVID vaccines than with prior  
14 vaccines.<sup>26</sup> There are reports of neurological adverse events, including Guillain-Barre,  
15 Bell’s Palsy, Transverse Myelitis, Paralysis, Seizure, Stroke, Dysstasia, Aphasia, and  
16 Tinnitus, as well as cardiovascular events such as clot and cardiac arrest.

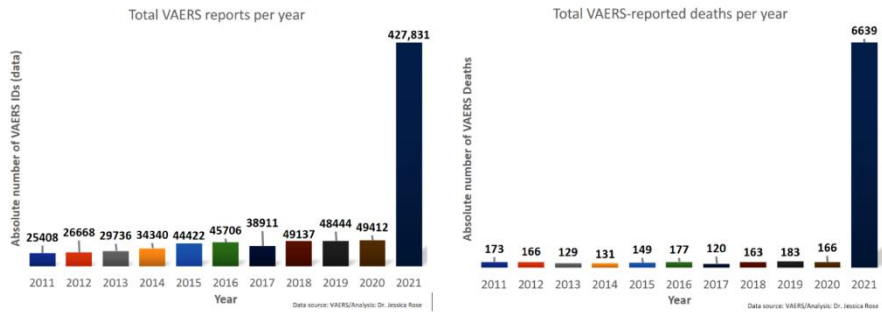
17 83. As one can see from this chart, VAERS reports regarding the COVID  
18 vaccines are extraordinarily high.

24 Lazarus, Ross et al. Grant Final Report. Grant ID: R18 HS 017045. Electronic Support for Public Health–Vaccine Adverse Event Reporting System (ESP:VAERS). Submitted to The Agency for Healthcare Research and Quality (AHRQ).

25 [https://vaers.hhs.gov/docs/VAERSDataUseGuide\\_November2020.pdf](https://vaers.hhs.gov/docs/VAERSDataUseGuide_November2020.pdf)

26 [https://cf5e727d-d02d-4d71-89ff-9fe2d3ad957f.filesusr.com/ugd/adf864\\_0490c898f7514df4b6fbc5935da07322.pdf](https://cf5e727d-d02d-4d71-89ff-9fe2d3ad957f.filesusr.com/ugd/adf864_0490c898f7514df4b6fbc5935da07322.pdf)  
27 <https://wonder.cdc.gov/vaers.html>

Figure 1: Bar plots showing the number of VAERS reports (left) and reported deaths (right) per year for the past decade. (2021 is partial data set.)



**D. COVID Vaccines Create Immunological Cripples, Vaccine Addicts, Super-Spreaders, and a Higher Chance of Death and Severe Hospitalization**

84. The COVID vaccines are not traditional vaccines.<sup>27</sup> Instead most carry coded instructions that cause cells to reproduce one portion of the SARS-CoV-2 virus, the spike protein. The vaccines thus induce the body to create spike proteins. A person only creates antibodies against this one limited portion (the spike protein) of the virus. This has several downstream deleterious effects.

85. First, these vaccines “mis-train” the immune system to recognize only a small part of the virus (the spike protein). Variants that differ, even slightly, in this protein, such as the Delta variant, are able to escape the narrow spectrum of antibodies created by the vaccines.

86. Second, the vaccines create “vaccine addicts,” meaning persons become dependent upon regular booster shots, because they have been “vaccinated” only against a tiny portion of a mutating virus. The Australian Health Minister Dr. Kerry Chant has stated that COVID will be with us forever and people will “have to get used to” taking

<sup>27</sup> FDA, *Coronavirus (COVID-19) | CBER-Regulated Biologics*, <https://www.fda.gov/vaccines-blood-biologics/industry-biologics/coronavirus-covid-19-cber-regulated-biologics>; FDA, *Coronavirus Treatment Acceleration Program (CTAP)*, <https://www.fda.gov/drugs/coronavirus-covid-19-drugs/coronavirus-treatment-acceleration-program-ctap>.

1 endless vaccines. “This will be a regular cycle of vaccination and revaccination.”<sup>28</sup>

2 87. Third, the vaccines do not prevent infection in the nose and upper airways,  
3 and vaccinated individuals have been shown to have much higher viral loads in these  
4 regions. This leads to the vaccinated becoming “super-spreaders” as they are carrying  
5 extremely high viral loads. <sup>29</sup>

6 88. In addition, the vaccinated may become more clinically ill than the  
7 unvaccinated. Scotland reported that the infection fatality rate in the vaccinated is 3.3  
8 times the unvaccinated and the risk of death if hospitalized is 2.15 times the  
9 unvaccinated.<sup>30</sup>

10 **E. Effective Treatments Are Available**

11 **i. Ivermectin Is Effective**

12 89. Ivermectin--a cheap, safe, widely available generic medication, whose  
13 precursor won the Nobel Prize in Medicine in 2015--treats and cures SARS-CoV-2  
14 infection, both while in the early infectious stage and later stages.<sup>31</sup> The evidence is  
15 both directly observed in multiple randomized controlled trials and epidemiological  
16 evidence worldwide. There are now more than sixty (60) studies demonstrating its  
17 efficacy as well as noting that nations that use ivermectin see their death rates plummet  
18 to 1% of the death rates of nations that do not.

19 **ii. Hydroxychloroquine Is Effective**

20 90. Hydroxychloroquine (HCQ) is a cheap, safe, widely available generic  
21 medication used billions of times annually in all countries around the world including  
22 the United States. It is typically prescribed for rheumatoid arthritis and lupus. HCQ

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24  
25 <sup>28</sup> <https://www.zerohedge.com/covid-19/aussie-health-chief-covid-will-be-us-forever-people-will-have-get-used-endless-booster>

26 <sup>29</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3897733](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3897733)

27 <sup>30</sup> [https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-08-04-covid19-publication\\_report.pdf](https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-08-04-covid19-publication_report.pdf), [https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-covid19-publication\\_report.pdf](https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-covid19-publication_report.pdf)

28 <sup>31</sup> <https://ivmmeta.com/ivm-meta.pdf>

1 treats and cures SARS-CoV-2 infection effectively in the early infectious stage. HCQ  
2 also provides substantial reduction in mortality in later stages.<sup>32, 33</sup> There are now more  
3 than 300 studies demonstrating its efficacy and nations that use HCQ have 1-10% of  
4 the death rate of nations that do not. HCQ is on the WHO’s List of Essential Medications  
5 that all nations should always have available. Chloroquine (an earlier version of HCQ)  
6 has been in continuous use for SARS-CoV-2 in China since February 2020.<sup>34</sup>

7 **iii. Budesonide Is Effective**

8 91. Budesonide, a cheap, safe, widely available generic inhaler medication  
9 used commonly in the United States, typically for emphysema, effectively treats SARS-  
10 CoV-2 infection while in the early infectious stage.<sup>35</sup> This was published in The Lancet  
11 in April 2021.<sup>36</sup> The trial at ClinicalTrials.gov was stopped early because steroids were  
12 shown to be so effective.<sup>37</sup>

13 **iv. Monoclonal Antibodies Are Effective**

14 92. Monoclonal antibodies are approved for COVID early treatment and are  
15 highly effective and universally safe.

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23 <sup>32</sup> <https://hcqmeta.com>

24 <sup>33</sup> [https://docs.google.com/document/d/1vDD8JkHe62hmpkalx1tejkd\\_zDnVwJ9XXRjgXAc1qUc/edit](https://docs.google.com/document/d/1vDD8JkHe62hmpkalx1tejkd_zDnVwJ9XXRjgXAc1qUc/edit)

25 <sup>34</sup> [https://www.jstage.jst.go.jp/article/bst/14/1/14\\_2020.01047/\\_article](https://www.jstage.jst.go.jp/article/bst/14/1/14_2020.01047/_article)

26 <sup>35</sup> [https://c19protocols.com/wp-content/uploads/2021/03/COVID\\_Budesonide\\_Oxford-Based\\_Dosing\\_Guidance.pdf](https://c19protocols.com/wp-content/uploads/2021/03/COVID_Budesonide_Oxford-Based_Dosing_Guidance.pdf)

27 <sup>36</sup> The Lancet, *Inhaled Budesonide in the treatment of early COVID-19 (STOIC): a phase 2, open-label randomized controlled trial* (July 1, 2021), [https://www.thelancet.com/article/S2213-2600\(21\)00160-0/fulltext](https://www.thelancet.com/article/S2213-2600(21)00160-0/fulltext)

28 <sup>37</sup> ClinicalTrials.gov, *STerOids in COVID-19 Study (STOIC)* (February 8, 2021), <https://clinicaltrials.gov/ct2/show/NCT04416399>; The Lancet – Respiratory Medicine, *Inhaled budesonide in the treatment of early COVID-19 (STOIC): a phase 2, open-label, randomised controlled trial* (April 9, 2021) [https://www.thelancet.com/article/S2213-2600\(21\)00160-0/fulltext](https://www.thelancet.com/article/S2213-2600(21)00160-0/fulltext).

1 **FIRST CAUSE OF ACTION**

2 **Violation of Fourteenth Amendment**

3 **Substantive Due Process – 42 U.S.C. § 1983**

4 **(Plaintiffs Against All Defendants)**

5 93. Plaintiffs reallege and incorporate by reference their allegations in each of  
6 the preceding paragraphs of the Complaint as if fully alleged herein.

7 94. The Mandate and various City Departments’ General Orders enforcing it  
8 violates the liberty protected by the Fourteenth Amendment to the Constitution, which  
9 includes rights of personal autonomy, self-determination, bodily integrity, and the right  
10 to reject medical treatment.

11 95. The ability to decide for oneself whether to accept or refuse medical  
12 treatment is a fundamental right.

13 96. The COVID vaccines are not vaccines, but are, as a factual matter,  
14 treatments. They are referred to herein as vaccines, but they are not. They are  
15 treatments.

16 97. Because the COVID vaccines are treatments – not vaccines – strict scrutiny  
17 applies. The High Court has recognized a “general liberty interest in refusing medical  
18 treatment.” (*Cruzan by Cruzan v. Director, Missouri Dept. of Health* (1990) 497 U.S.  
19 261, 278.) It has also recognized that the forcible injection of medication into a  
20 nonconsenting person’s body represents a substantial interference with that person’s  
21 liberty. (*Washington v. Harper* (1990) 494 U.S. 210; *see also id* at 223 (further  
22 acknowledging in dicta that, outside of the prison context, the right to refuse treatment  
23 would be a “fundament right” subject to strict scrutiny.”

24 98. Accordingly, the Mandate and various City Departments’ General Orders  
25 enforcing it violates the Plaintiffs’ constitutional right to decisional privacy with regard  
26 to medical treatment.

1           99. As mandated medical treatments are a substantial burden, Defendants must  
2 prove that the Mandate is narrowly tailored to meet a compelling interest.

3           100. No such compelling interest exists because, as alleged above, the COVID  
4 vaccines are not effective against the now dominant Delta variant of COVID in that  
5 they do not prevent the recipient from becoming infected, getting reinfected, or  
6 transmitting COVID to others. Indeed, evidence shows that vaccinated individuals have  
7 more COVID in their nasal passages than unvaccinated people do. The Delta variant is  
8 the current variant and accounts for over 90% of the COVID infections in the United  
9 States at this time.

10           101. The COVID vaccines may have been somewhat effective against the  
11 original COVID strain, but that strain has come and gone, and the COVID vaccines—  
12 designed to fight yesterday’s threat—are simply ineffective against the current Delta  
13 variant.

14           102. Since the COVID vaccines are ineffective against the Delta variant, there  
15 can be no compelling interest to mandate their use at this time.

16           103. But even if there were a compelling interest in mandating the COVID  
17 vaccinations, the Mandate is not narrowly tailored to achieve such an interest.

18           104. The blanket Mandate ignores individual factors increasing or decreasing  
19 the risks that the plaintiffs—indeed, all City employees—pose to themselves or to  
20 others.

21           105. Defendants entirely disregard whether employees have already obtained  
22 natural immunity despite the fact that natural immunity does actually provide immunity  
23 whereas the COVID vaccines do not.

24           106. Treating all employees the same, regardless of their individual medical  
25 status, risk factors, and natural immunity status is not narrowly tailored.

26           107. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to temporary,  
27 preliminary, and permanent injunctive relief restraining Defendants from enforcing the  
28



1 Mandate.

2 **SECOND CAUSE OF ACTION**

3 **Violation of Fourteenth Amendment**

4 **Equal Protection 42 U.S.C. § 1983**

5 **(Plaintiffs Against All Defendants)**

6 108. Plaintiffs reallege and incorporate by reference their allegations in each of  
7 the preceding paragraphs of the Complaint as if fully alleged herein.

8 109. The Equal Protection Clause prohibits classifications that affect some  
9 groups of citizens differently than others. (Engquist v. Or. Dept. of Agric. (2008) 553  
10 U.S. 591, 601.) The touchstone of this analysis is whether a state creates disparity  
11 between classes of individuals whose situations are arguably indistinguishable. (Ross  
12 v. Moffitt (1974) 417 U.S. 600,609.)

13 110. The Mandate creates two classes of City employees; vaccinated and  
14 unvaccinated, as well as employees who have reported their vaccination status to the  
15 City and those who have not. The members of one class, the unvaccinated, get  
16 terminated. The same is true for the non-reporting class irrespective of vaccination  
17 status. In either event they cannot advance their careers. They cannot provide for their  
18 families, pay their mortgages, or make a car payment. The other class, the vaccinated  
19 and reporting, gets to keep their job in their chosen profession, advance their careers,  
20 provide for their families, pay their mortgages, and make their car payments.

21 111. Yet the situations of these employees are indistinguishable because  
22 vaccinated and reporting City employees can become infected with COVID, become  
23 re-infected with COVID, and can transmit COVID to fellow employees, school visitors,  
24 and students. The vaccines make no difference in these respects. Their only function is  
25 to make symptoms less severe.

26 112. Discriminating against the unvaccinated and non-reporting controverts the  
27 goals of the Equal Protection Clause – i.e., to abolish barriers presenting unreasonable  
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1 obstacles to advancement on the basis of individual merit.

2 113. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to temporary,  
3 preliminary, and permanent injunctive relief restraining Defendants from enforcing the  
4 Vaccine Mandate.

5 **THIRD CAUSE OF ACTION**

6 **Declaratory and Injunctive Relief under Cal. Constitution**

7 **(Plaintiffs Against All Defendants)**

8 114. Plaintiffs reallege and incorporate by reference their allegations in each of  
9 the preceding paragraphs of the Complaint as if fully alleged herein.

10 115. The Plaintiffs are employed by the City. They have not complied with the  
11 City's Mandate, including reporting of their vaccination status. They object to being  
12 compelled to turn over their private medical information to the City as a condition of  
13 their continued employment.

14 116. Individuals have a right to privacy under the California Constitution. This  
15 state law privacy right, which was added by voters in 1972, is far broader than the right  
16 to privacy under the federal Constitution. It is the broadest privacy right in America and  
17 has been interpreted by the California Supreme Court to protect both the right to  
18 informational privacy and to bodily integrity.

19 117. City employees have a legally protected privacy interest not just in their  
20 bodily integrity, but their private medical information as well. Their expectation of  
21 privacy is reasonable. The City's Mandate constitutes a serious invasion of those  
22 privacy rights, as alleged above.

23 118. Although the City may argue that the vaccine mandate serves a compelling  
24 interest, there are feasible and effective alternatives that have a lesser impact on privacy  
25 interests. Thus, the City's mandate will not survive strict scrutiny.

26 119. On information and belief, the City contends that its mandate does not  
27 violate the privacy rights of City employees or satisfies strict scrutiny.

1 120. Plaintiffs desire a judicial declaration that the City’s Mandate is facially  
2 unconstitutional because it violates the City’s employees’ right to privacy under the  
3 California Constitution.

4 121. A judicial determination of these issues is necessary and appropriate  
5 because such a declaration will clarify the parties’ rights and obligations, permit them  
6 to have certainty regarding those rights and potential liability, and avoid a multiplicity  
7 of actions.

8 122. The City’s actions have harmed Plaintiffs among other City employees, as  
9 alleged above.

10 123. Plaintiffs have no adequate remedy at law and will suffer irreparable harm  
11 if the Court does not declare the Mandate unconstitutional. Thus, they seek preliminary  
12 and permanent injunctive relief enjoining the City from enforcing the mandate.

13 124. This action serves the public interest, justifying an award of attorneys’ fees  
14 under section 1021.5 of the California Code of Civil Procedure.

15 **FOURTH CAUSE OF ACTION**

16 **Declaratory and Injunctive Relief under Americans with Disabilities Act 42 USC**

17 **§§ 12101, *et seq.* – Disparate Treatment and Failure-To-Accommodate**

18 **(Plaintiffs Against Defendants)**

19 125. Plaintiffs reallege and incorporate by reference their allegations in each of  
20 the preceding paragraphs of the Complaint as if fully alleged herein.

21 126. Defendants’ enforcement of the Mandate through termination of non-  
22 compliant Plaintiffs without engaging in an interactive process with each employee to  
23 identify and implement appropriate reasonable accommodations enabling the employee  
24 to perform their job duties directly violates, and conflicts with, their duties and  
25 obligations under the Americans with Disabilities Act (“ADA”). 42 USC §§ 12101, *et*  
26 *seq.*

27 127. Defendants have threatened to, and in several instances have, placed  
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1 Plaintiffs on administrative leave and threatened termination from their employment  
2 because of Defendants’ belief that Plaintiffs’ physical condition of being unvaccinated  
3 and/or having failed to report their vaccination status makes them incapable of  
4 performing the duties they have performed competently for nearly two years since the  
5 COVID pandemic first appeared.

6 128. Defendants’ mandatory vaccination is based on Defendants’ perception  
7 that those who are unvaccinated present a danger of infection to themselves from  
8 contact with others and a danger to others from contagion. As a consequence, it is  
9 apparently Defendants’ view that without the safety of vaccination and reporting the  
10 Plaintiffs are not capable of performing their work by reason of their physical condition  
11 and thus are regarded as being disabled.

12 129. Defendants’ threat to terminate the Plaintiffs’ employment by reason of  
13 their physical condition constitutes discrimination on the basis of a perception of  
14 disability in violation of the ADA, 42 USC 126. See, §§ 12102(3) (forbidding  
15 discrimination on the basis of a person being regarded as having an impairment); and §  
16 12112 (forbidding any impairment in the terms of employment of an individual on the  
17 basis of a perception of impairment.)

18 130. Further Plaintiffs are qualified individuals with a disability, because they  
19 remain able, with or without reasonable accommodation, to perform the essential  
20 functions of the employment position that Plaintiffs hold, as demonstrated by the fact  
21 Plaintiffs’ have performed their essential job functions competently for nearly two years  
22 since the COVID pandemic first appeared and, in many instances, continued those  
23 operations without cessation during worst of the pandemic as essential workers.

24 131. Further, assuming for the sake of argument, Plaintiffs become unable to  
25 perform their essential job functions by virtue Defendants’ perception that as of the  
26 arbitrary and capricious deadlines specified in the Mandate unvaccinated and/or non-  
27 reporting employees then present a danger of infection to themselves from contact with  
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1 others and a danger to others from contagion, there exists an abundance of reasonable  
2 accommodations designed to mitigate the risk of contagion that the City implemented,  
3 and relied on, such as remote work, social distancing, erection of transparent barriers,  
4 face masking, alternate shifts to alleviate crowding in the work place, advanced cleaning  
5 protocols, and efforts to improve ventilation, among other things.

6 132. An actual controversy involving justiciable questions related to this  
7 controversy exists related to the rights and obligations of the respective parties with  
8 respect to the ADA.

9 133. Plaintiffs seek a judicial declaration that proceeding with the imposition of  
10 the threatened employment sanctions is a violation of the ADA and seek an order  
11 restraining and enjoining Defendants from violation of the ADA by employment  
12 sanction on the basis of perceived physical disability.

13 **FIFTH CAUSE OF ACTION**

14 **Violation of Due Process – *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194**  
15 **(Plaintiffs Against all Defendants)**

16 134. Plaintiffs reallege and incorporate by reference their allegations in each of  
17 the preceding paragraphs of the Complaint as if fully alleged herein.

18 135. Defendants have suspended various City employees, including Plaintiffs  
19 by placing them on administrative leave for failure to comply with the Mandate.

20 136. Under *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 and its progeny  
21 Plaintiffs have a property interest in continued employment with City protected by due  
22 process.

23 137. On information and belief, the City contends that it does not have to afford  
24 Plaintiffs a full and complete Skelly hearing and rights and has instead suspended its  
25 employees administratively including the Plaintiffs for five days or more, without a  
26 hearing within a reasonable time thereafter and providing written notice explaining: (i)  
27 the charge; (ii) proposed discipline; (iii) the policy or rule violated; (iv) the factual basis  
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1 for the same; (v) produced the documents purporting to support the charge(s); (vi)  
2 containing a date for an in-person hearing; and (vii) the deadline for any response.

3 138. An actual controversy involving justiciable questions related to this  
4 controversy exists related to the rights and obligations of the respective parties with  
5 respect to Plaintiffs’ and City employees’ rights under *Skelly v. State Personnel Bd.*  
6 (1975) 15 Cal.3d 194 and its progeny

7 139. Plaintiffs seek a judicial declaration that proceeding with the imposition of  
8 the threatened employment sanctions is a violation of *Skelly* and seek an order  
9 restraining and enjoining Defendants from proceeding with the imposition of the  
10 threatened employment sanctions before affording due process under *Skelly*.

11 **PRAYER**

12 Wherefore, Plaintiffs pray for judgment in their favor and against Defendants as  
13 follows:

14 **ON THE FIRST CAUSE OF ACTION**

- 15 1. Temporary, preliminary, and permanent injunctive relief restraining  
16 Defendants from enforcing the Mandate; and  
17 2. For reasonable attorneys’ fees.

18 **ON THE SECOND CAUSE OF ACTION**

- 19 1. Temporary, preliminary, and permanent injunctive relief restraining  
20 Defendants from enforcing the Vaccine Mandate; and  
21 2. For reasonable attorneys’ fees.

22  
23 **ON THE THIRD CAUSE OF ACTION**

- 24 1. A judicial declaration that the City’s Mandate is facially unconstitutional  
25 because it violates Plaintiffs’ and City employees’ right to privacy under the California  
26 Constitution; and  
27 2. Preliminary and permanent injunctive relief enjoining the City from  
28

1 enforcing the Mandate.

2 **ON THE FOURTH CAUSE OF ACTION**

3 1. A judicial declaration that proceeding with the imposition of the threatened  
4 employment sanctions is a violation of the ADA; and

5 2. An order restraining and enjoining Defendants from violation of the ADA  
6 by employment sanction on the basis of perceived physical disability.

7 **ON THE FIFTH CAUSE OF ACTION**

8 1. A judicial declaration proceeding with the imposition of the threatened  
9 employment sanctions is a violation of Skelly; and

10 2. An order restraining and enjoining Defendants from proceeding with the  
11 imposition of the threatened employment sanctions before affording due process under  
12 *Skelly*.

13 **ON ALL CAUSES OF ACTION**

- 14 1. For judgment in favor of Plaintiffs;  
15 2. For costs of suit herein; and  
16 3. For such other and further relief as the Court may deem just and proper.

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23 Respectfully Submitted,

24  
25 Dated: October 21, 2021

**JW HOWARD/ ATTORNEYS LTD.**

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By:

*/s/ John W. Howard*

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# EXHIBIT “A”



## COVID-19 Vaccination Policy

Issued: 6/23/2021

Amended 8/6/2021

Amended 9/8/2021

**9/8/2021 Revision:** *This revision updates the vaccination policy for all employees subject to the San Francisco Health Officer's [Safer-Return-Together Order](#) ("SF Health Order") (last amended August 24, 2021) and extends the original September 15, 2021 deadline to September 30, 2021 for Employees who are assigned to or routinely work onsite in High-Risk settings or other Health Care Facilities and October 13, 2021 for Employees intermittently or occasionally working in High-Risk settings.*

*This revision also clarifies the vaccination deadline for all City employees who do not fall under the Health Order or the [CDPH Vaccination Status Order](#) as November 1, 2021, following the August 23, 2021, FDA approval of the Pfizer-BioNTech (Comirnaty) vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older.*

**8/6/2021 Revision:** *This revision updates the vaccination policy for all employees subject to the San Francisco Health Officer's [Safer-Return-Together Order](#) ("SF Health Order") (last amended August 2, 2021) and who are required to be vaccinated no later than September 15, 2021 employees for regularly scheduled to work in high-risk settings and no later than October 13, 2021 for employees who may occasionally or intermittently enter high-risk settings as part of their job. All employees are required to report their vaccination status to the City by the August 12, 2021 extended deadline.*

*This revision also clarifies that the City's Vaccination Policy applies to City interns, volunteers, and City fellows (including but not limited to McCarthy Fellows, and Willie Brown Fellows). Generally, all such persons must show proof of full vaccination status to the Departmental Personnel Officer or Human Resources personnel at the department where they intern, volunteer or have their fellowship, who will verify that the individual has shown appropriate documentation that they are fully vaccinated before the start of their internship, fellowship or volunteer activity, or, if they are a current intern, fellow or volunteer, by no later than the applicable deadline under the SF Health Order (if in a high-risk setting) or by October 13, 2021. Departments must not retain copies of the individual's vaccination record after verification. An addendum has been added to provide the dates by which all subject to this policy must report and begin the vaccination process.*

### PURPOSE STATEMENT

The City and County of San Francisco (City) must provide a safe and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to protect its employees and the public as it reopens services and returns more employees to workplaces.

According to the federal Centers for Disease Control (CDC), the California Department of Public Health (CDPH), and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated, and certain safety measures remain necessary to protect against COVID-19 cases and deaths. Vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. Unvaccinated employees, interns, fellows, and volunteers are at greater risk of contracting and spreading COVID-19 within the workplace and City facilities, and to the public that depends on City services.

To best protect its employees and others in City facilities, and fulfill its obligations to the public, all employees must, as a condition of employment: (1) report their vaccination status to the City; and (2) be fully vaccinated and report that vaccination status to the City no later than either the applicable deadline under the San Francisco Health Order, if it applies, or 10 weeks after the Federal Food & Drug Administration (FDA) giving final approval to at least one COVID-19 vaccine (November 1, 2021).

### **LEGAL REQUIREMENTS**

On June 17, 2021, Governor Newsom issued Executive Order No. N-09-21, which implements new California Division of Occupational Safety and Health (Cal/OSHA) rules, effective June 17, 2021. These rules require employers to take specific measures to protect employees from COVID-19, including enforcing masking and quarantine requirements, and offering COVID-19 testing and time off, for employees who are unvaccinated or for whom the employer does not have documentation verifying they are fully vaccinated. The Cal/OSHA rules require employers to verify and document that an employee is fully vaccinated before allowing that employee to discontinue masking indoors. For unvaccinated employees or employees for whom the City does not have documentation verifying fully vaccinated status, the City must enforce masking, provide COVID-19 testing following a close contact in the workplace or anytime they have COVID-19 symptoms, and exclude these employees from the workplace for 10 days after a close contact. Upon request, the City also must provide non-vaccinated employees with respirators (N95 masks) and provide education about using that type of mask.

On July 26, 2021 CDPH issued an Order ([CDPH Vaccination Status Order](#)) that workers in high-risk and other healthcare settings must report their vaccination status no later than August 23, 2021. The CDPH Vaccination Status Order also requires routine testing and more rigorous masking for unvaccinated or only partially vaccinated personnel working in these settings.

On August 24, 2021, the San Francisco Health Officer updated the [SF Health Order](#) requiring all employers to determine the vaccination status of employees who routinely work onsite in high-risk settings by no later than September 30, 2021 and precluding unvaccinated employees from entering those facilities after that date, and precluding unvaccinated employees who may occasionally or intermittently enter those settings from entering those facilities after October 13, 2021. This order further requires employees (among others) to remain masked in the workplace, effectively superseding the Cal/OSHA COVID-19 Temporary Emergency Standard which allows vaccinated employees who had documented that status to remove their masks.

On August 2, 2021 DHR issued a revised policy Face Coverings at Work Policy that complies with both the state and local health orders and can be found here:

<https://sfdhr.org/sites/default/files/documents/COVID-19/Face-Covering-Requirements-at-Work.pdf>

On August 5, 2021, CDPH issued a new Order ([Health Care Worker Vaccine Requirement](#)) mandating all workers who provide services or work in identified health care facilities to receive their final dose of a vaccine regimen *no later than September 30, 2021*. The only exemptions to the Health Care Worker Vaccine Requirement are for workers who have a documented and [approved exemption](#) from vaccination on the basis of a sincerely-held religious belief or due to a qualifying medical condition or restriction.

## STATEMENT OF POLICY

### Definition of “Employees” Under This Policy

For purposes of this policy only, the term “employees” includes all full, part-time, and as-need City employees regardless of appointment type, volunteers, interns, and City fellows (such as San Francisco Fellows, McCarthy Fellows, Fish Fellows, and Willie Brown Fellows).

### Requirement to Report Vaccination Status

To protect the City’s workforce and the public that it serves, all City employees were required to report their vaccination status to the City by July 29, 2021 (with a subsequent extension to August 12, 2021), by providing the following information:

- Whether the employee is vaccinated (yes or no)
- For employees who are vaccinated or partly vaccinated:
  - The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson, or other vaccine received in approved clinical trials)
  - Date of first dose vaccine;
  - Date of second vaccine for a 2-dose vaccine;
  - Declaration under penalty of perjury that they have been fully vaccinated, and
  - Upload documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee’s healthcare provider, or documentation issued by the State of California by going to:  
<https://myvaccinerecord.cdph.ca.gov/>

To be fully vaccinated, 14 days must have passed since an employee received the final dose of a two-shot vaccine or a dose of a one-shot vaccine. All unvaccinated employees must continue to comply with masking, testing, and other safety requirements until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy. Employees who previously reported that they were unvaccinated must update their status once they are fully vaccinated.

Failure to comply with the reporting requirement may result in discipline, or non-disciplinary separation from employment with the City for failure to meet the minimum qualifications of the job.

### **How to Report Vaccination Status**

Volunteers, interns, and City fellows must verify that they are fully vaccinated to the Departmental Personnel Officer or Human Resources professional by showing a copy of their CDC COVID-19 Vaccination Record Card, documentation from the individual's healthcare provider, or documentation issued by the State of California as described above. The department must retain documentation that the individual's vaccination status has been verified **but must not retain copies of the individual's vaccination record.**

All other employees must report their vaccination information and upload documentation verifying that status into the City's People & Pay system using the Employee Portal or by hand using the COVID-19 Vaccination Status Form. Only City employees authorized to access employee personnel information will have access to the medical portion of the file. The City will share information about an employee's vaccination status only on a need-to-know basis, including to the employee's department, managers, and supervisors for the purpose of enforcing masking, quarantining in the event of a close contact, and other safety requirements.

### **Vaccination Requirements for Employees**

1. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees routinely assigned to or working onsite in high-risk settings must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who are routinely assigned to or working onsite in high-risk settings. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

2. To comply with the CDPH Health Care Worker Requirement and ensure delivery of City services, City policy requires that all City employees who are not otherwise covered by the SF Health Order, but who provide services or work in the health care facilities identified in the state's order, must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious-beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees provide services or work in the health care facilities identified in the state's order. Those employees who fail to meet the vaccination and reporting requirements under this Policy

will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

3. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time must be fully vaccinated — no later than October 13, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and therefore unable to perform an essential function of their job and will not meet the minimum requirements to perform their job.

4. Volunteers, interns, and City fellows must be fully vaccinated – and must have reported that status and providing documentation verifying that status to the Departmental Human Resources personnel – as a condition of serving as a City volunteer, intern or fellow. Those already working and who do not fall under the SF Health Order must be fully vaccinated no later than October 13, 2021. Failure to comply with this policy will result in suspension of the internship, fellowship, or volunteer opportunity until such time as the individual provides verification that they are fully vaccinated.

5. All other City employees must be fully vaccinated as a condition of employment within ten weeks after the FDA provides final approval to at least one COVID-19 vaccine (November 1, 2021), unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee with an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. Once the vaccination deadline is reached (November 1, 2021) the vaccination and reporting requirements are conditions of City employment and a minimum qualification for all City employees.

Failure to comply with this Policy may result in a disciplinary action, or non-disciplinary separation from employment for failure to meet the minimum qualifications of the job.

### **Requesting an Exemption from the Vaccination Requirement**

Employees with a medical condition or other medical restriction that affects their eligibility for a vaccine, as verified by their medical provider, or those with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation to be excused from this vaccination requirement but must still report their status by the August 12, 2021 extended deadline. The City will review requests for accommodation on a case-by-case basis and engage in an interactive process with employees who submit such requests. For some

positions where fully vaccinated status is required to enter the facility where the employee works, an accommodation may require transfer to an alternate vacant position, if available, in another classification for which the employee meets the minimum qualifications. Requests for Reasonable Accommodation forms and procedures can be found here: <https://sfdhr.org/new-vaccine-and-face-covering-policy-city-employees>

## COVID-19 VACCINATION COMPLIANCE DEADLINES ADDENDUM TO VACCINATION POLICY AMENDED AUGUST 5, 2021

Below are the vaccination status reporting deadlines for City employees.

COVID-19 VACCINATION STATUS REPORTING DEADLINES	
<b>July 29, 2021</b>	Reporting Deadline
<b>August 12, 2021</b>	Grace Period - Final day to report vaccination status

Below are the vaccination deadlines for City employees. City employees working in high-risk settings are subject to non-disciplinary release if not vaccinated by the deadlines referenced below for failure to meet the minimum qualifications of their jobs.

COVID-19 VACCINATION DEADLINES BY EMPLOYEE TYPE	
<b>Employees who are assigned to or routinely work onsite in High-Risk Settings or other Health Care Facilities</b>	Must receive their final dose of a vaccine regimen <i>no later than</i> <b>September 30, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 2, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 9, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> September 30, 2021</li> </ul>
<b>Employees intermittently or occasionally working in “High-Risk Settings”</b>	Must be fully vaccinated <i>no later than</i> <b>October 13, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First Shot <i>no later than</i> September 1, 2021; Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Pfizer:</b> First Shot <i>no later than</i> September 8, 2021; Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Johnson &amp; Johnson:</b> First Shot <i>no later than</i> September 29 2021</li> </ul>
<b>All other employees not working in “High-Risk” or other health care settings</b>	Must be fully vaccinated <i>no later than</i> <b>November 1, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 20, 2021; Second shot <i>no later than</i> October 18, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 27, 2021; Second shot <i>no later than</i> October 18, 2021.</li> </ul> <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> October 18, 2021





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*This revision also clarifies that the City's Vaccination Policy applies to City interns, volunteers, and City fellows (including but not limited to McCarthy Fellows, and Willie Brown Fellows). Generally, all such persons must show proof of full vaccination status to the Departmental Personnel Officer or Human Resources personnel at the department where they intern, volunteer or have their fellowship, who will verify that the individual has shown appropriate documentation that they are fully vaccinated before the start of their internship, fellowship or volunteer activity, or, if they are a current intern, fellow or volunteer, by no later than the applicable deadline under the SF Health Order (if in a high-risk setting) or by October 13, 2021. Departments must not retain copies of the individual's vaccination record after verification. An addendum has been added to provide the dates by which all subject to this policy must report and begin the vaccination process.*

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To best protect its employees and others in City facilities, and fulfill its obligations to the public, all employees must, as a condition of employment: (1) report their vaccination status to the City; and (2) be fully vaccinated and report that vaccination status to the City no later than either the applicable deadline under the San Francisco Health Order, if it applies, or 10 weeks after the Federal Food & Drug Administration (FDA) giving final approval to at least one COVID-19 vaccine (November 1, 2021).

### **LEGAL REQUIREMENTS**

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On July 26, 2021 CDPH issued an Order ([CDPH Vaccination Status Order](#)) that workers in high-risk and other healthcare settings must report their vaccination status no later than August 23, 2021. The CDPH Vaccination Status Order also requires routine testing and more rigorous masking for unvaccinated or only partially vaccinated personnel working in these settings.

On August 24, 2021, the San Francisco Health Officer updated the [SF Health Order](#) requiring all employers to determine the vaccination status of employees who routinely work onsite in high-risk settings by no later than September 30, 2021 and precluding unvaccinated employees from entering those facilities after that date, and precluding unvaccinated employees who may occasionally or intermittently enter those settings from entering those facilities after October 13, 2021. This order further requires employees (among others) to remain masked in the workplace, effectively superseding the Cal/OSHA COVID-19 Temporary Emergency Standard which allows vaccinated employees who had documented that status to remove their masks.

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### Requirement to Report Vaccination Status

To protect the City’s workforce and the public that it serves, all City employees were required to report their vaccination status to the City by July 29, 2021 (with a subsequent extension to August 12, 2021), by providing the following information:

- Whether the employee is vaccinated (yes or no)
- For employees who are vaccinated or partly vaccinated:
  - The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson, or other vaccine received in approved clinical trials)
  - Date of first dose vaccine;
  - Date of second vaccine for a 2-dose vaccine;
  - Declaration under penalty of perjury that they have been fully vaccinated, and
  - Upload documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee’s healthcare provider, or documentation issued by the State of California by going to:  
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To be fully vaccinated, 14 days must have passed since an employee received the final dose of a two-shot vaccine or a dose of a one-shot vaccine. All unvaccinated employees must continue to comply with masking, testing, and other safety requirements until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy. Employees who previously reported that they were unvaccinated must update their status once they are fully vaccinated.

Failure to comply with the reporting requirement may result in discipline, or non-disciplinary separation from employment with the City for failure to meet the minimum qualifications of the job.

### **How to Report Vaccination Status**

Volunteers, interns, and City fellows must verify that they are fully vaccinated to the Departmental Personnel Officer or Human Resources professional by showing a copy of their CDC COVID-19 Vaccination Record Card, documentation from the individual's healthcare provider, or documentation issued by the State of California as described above. The department must retain documentation that the individual's vaccination status has been verified **but must not retain copies of the individual's vaccination record.**

All other employees must report their vaccination information and upload documentation verifying that status into the City's People & Pay system using the Employee Portal or by hand using the COVID-19 Vaccination Status Form. Only City employees authorized to access employee personnel information will have access to the medical portion of the file. The City will share information about an employee's vaccination status only on a need-to-know basis, including to the employee's department, managers, and supervisors for the purpose of enforcing masking, quarantining in the event of a close contact, and other safety requirements.

### **Vaccination Requirements for Employees**

1. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees routinely assigned to or working onsite in high-risk settings must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who are routinely assigned to or working onsite in high-risk settings. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

2. To comply with the CDPH Health Care Worker Requirement and ensure delivery of City services, City policy requires that all City employees who are not otherwise covered by the SF Health Order, but who provide services or work in the health care facilities identified in the state's order, must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious-beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees provide services or work in the health care facilities identified in the state's order. Those employees who fail to meet the vaccination and reporting requirements under this Policy

will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

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4. Volunteers, interns, and City fellows must be fully vaccinated – and must have reported that status and providing documentation verifying that status to the Departmental Human Resources personnel – as a condition of serving as a City volunteer, intern or fellow. Those already working and who do not fall under the SF Health Order must be fully vaccinated no later than October 13, 2021. Failure to comply with this policy will result in suspension of the internship, fellowship, or volunteer opportunity until such time as the individual provides verification that they are fully vaccinated.

5. All other City employees must be fully vaccinated as a condition of employment within ten weeks after the FDA provides final approval to at least one COVID-19 vaccine (November 1, 2021), unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee with an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. Once the vaccination deadline is reached (November 1, 2021) the vaccination and reporting requirements are conditions of City employment and a minimum qualification for all City employees.

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Employees with a medical condition or other medical restriction that affects their eligibility for a vaccine, as verified by their medical provider, or those with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation to be excused from this vaccination requirement but must still report their status by the August 12, 2021 extended deadline. The City will review requests for accommodation on a case-by-case basis and engage in an interactive process with employees who submit such requests. For some

positions where fully vaccinated status is required to enter the facility where the employee works, an accommodation may require transfer to an alternate vacant position, if available, in another classification for which the employee meets the minimum qualifications. Requests for Reasonable Accommodation forms and procedures can be found here: <https://sfdhr.org/new-vaccine-and-face-covering-policy-city-employees>

## COVID-19 VACCINATION COMPLIANCE DEADLINES ADDENDUM TO VACCINATION POLICY AMENDED AUGUST 5, 2021

Below are the vaccination status reporting deadlines for City employees.

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Below are the vaccination deadlines for City employees. City employees working in high-risk settings are subject to non-disciplinary release if not vaccinated by the deadlines referenced below for failure to meet the minimum qualifications of their jobs.

COVID-19 VACCINATION DEADLINES BY EMPLOYEE TYPE	
<b>Employees who are assigned to or routinely work onsite in High-Risk Settings or other Health Care Facilities</b>	Must receive their final dose of a vaccine regimen <i>no later than</i> <b>September 30, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 2, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 9, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> September 30, 2021</li> </ul>
<b>Employees intermittently or occasionally working in “High-Risk Settings”</b>	Must be fully vaccinated <i>no later than</i> <b>October 13, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First Shot <i>no later than</i> September 1, 2021;                          Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Pfizer:</b> First Shot <i>no later than</i> September 8, 2021;                          Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Johnson &amp; Johnson:</b> First Shot <i>no later than</i> September 29 2021</li> </ul>
<b>All other employees not working in “High-Risk” or other health care settings</b>	Must be fully vaccinated <i>no later than</i> <b>November 1, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 20, 2021; Second shot <i>no later than</i> October 18, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 27, 2021; Second shot <i>no later than</i> October 18, 2021.</li> </ul> <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> October 18, 2021





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Amended 8/6/2021

Amended 9/8/2021

**9/8/2021 Revision:** *This revision updates the vaccination policy for all employees subject to the San Francisco Health Officer's [Safer-Return-Together Order](#) ("SF Health Order") (last amended August 24, 2021) and extends the original September 15, 2021 deadline to September 30, 2021 for Employees who are assigned to or routinely work onsite in High-Risk settings or other Health Care Facilities and October 13, 2021 for Employees intermittently or occasionally working in High-Risk settings.*

*This revision also clarifies the vaccination deadline for all City employees who do not fall under the Health Order or the [CDPH Vaccination Status Order](#) as November 1, 2021, following the August 23, 2021, FDA approval of the Pfizer-BioNTech (Comirnaty) vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older.*

**8/6/2021 Revision:** *This revision updates the vaccination policy for all employees subject to the San Francisco Health Officer's [Safer-Return-Together Order](#) ("SF Health Order") (last amended August 2, 2021) and who are required to be vaccinated no later than September 15, 2021 employees for regularly scheduled to work in high-risk settings and no later than October 13, 2021 for employees who may occasionally or intermittently enter high-risk settings as part of their job. All employees are required to report their vaccination status to the City by the August 12, 2021 extended deadline.*

*This revision also clarifies that the City's Vaccination Policy applies to City interns, volunteers, and City fellows (including but not limited to McCarthy Fellows, and Willie Brown Fellows). Generally, all such persons must show proof of full vaccination status to the Departmental Personnel Officer or Human Resources personnel at the department where they intern, volunteer or have their fellowship, who will verify that the individual has shown appropriate documentation that they are fully vaccinated before the start of their internship, fellowship or volunteer activity, or, if they are a current intern, fellow or volunteer, by no later than the applicable deadline under the SF Health Order (if in a high-risk setting) or by October 13, 2021. Departments must not retain copies of the individual's vaccination record after verification. An addendum has been added to provide the dates by which all subject to this policy must report and begin the vaccination process.*

### PURPOSE STATEMENT

The City and County of San Francisco (City) must provide a safe and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to protect its employees and the public as it reopens services and returns more employees to workplaces.



According to the federal Centers for Disease Control (CDC), the California Department of Public Health (CDPH), and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated, and certain safety measures remain necessary to protect against COVID-19 cases and deaths. Vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. Unvaccinated employees, interns, fellows, and volunteers are at greater risk of contracting and spreading COVID-19 within the workplace and City facilities, and to the public that depends on City services.

To best protect its employees and others in City facilities, and fulfill its obligations to the public, all employees must, as a condition of employment: (1) report their vaccination status to the City; and (2) be fully vaccinated and report that vaccination status to the City no later than either the applicable deadline under the San Francisco Health Order, if it applies, or 10 weeks after the Federal Food & Drug Administration (FDA) giving final approval to at least one COVID-19 vaccine (November 1, 2021).

### **LEGAL REQUIREMENTS**

On June 17, 2021, Governor Newsom issued Executive Order No. N-09-21, which implements new California Division of Occupational Safety and Health (Cal/OSHA) rules, effective June 17, 2021. These rules require employers to take specific measures to protect employees from COVID-19, including enforcing masking and quarantine requirements, and offering COVID-19 testing and time off, for employees who are unvaccinated or for whom the employer does not have documentation verifying they are fully vaccinated. The Cal/OSHA rules require employers to verify and document that an employee is fully vaccinated before allowing that employee to discontinue masking indoors. For unvaccinated employees or employees for whom the City does not have documentation verifying fully vaccinated status, the City must enforce masking, provide COVID-19 testing following a close contact in the workplace or anytime they have COVID-19 symptoms, and exclude these employees from the workplace for 10 days after a close contact. Upon request, the City also must provide non-vaccinated employees with respirators (N95 masks) and provide education about using that type of mask.

On July 26, 2021 CDPH issued an Order ([CDPH Vaccination Status Order](#)) that workers in high-risk and other healthcare settings must report their vaccination status no later than August 23, 2021. The CDPH Vaccination Status Order also requires routine testing and more rigorous masking for unvaccinated or only partially vaccinated personnel working in these settings.

On August 24, 2021, the San Francisco Health Officer updated the [SF Health Order](#) requiring all employers to determine the vaccination status of employees who routinely work onsite in high-risk settings by no later than September 30, 2021 and precluding unvaccinated employees from entering those facilities after that date, and precluding unvaccinated employees who may occasionally or intermittently enter those settings from entering those facilities after October 13, 2021. This order further requires employees (among others) to remain masked in the workplace, effectively superseding the Cal/OSHA COVID-19 Temporary Emergency Standard which allows vaccinated employees who had documented that status to remove their masks.

On August 2, 2021 DHR issued a revised policy Face Coverings at Work Policy that complies with both the state and local health orders and can be found here:

<https://sfdhr.org/sites/default/files/documents/COVID-19/Face-Covering-Requirements-at-Work.pdf>

On August 5, 2021, CDPH issued a new Order ([Health Care Worker Vaccine Requirement](#)) mandating all workers who provide services or work in identified health care facilities to receive their final dose of a vaccine regimen *no later than September 30, 2021*. The only exemptions to the Health Care Worker Vaccine Requirement are for workers who have a documented and [approved exemption](#) from vaccination on the basis of a sincerely-held religious belief or due to a qualifying medical condition or restriction.

## STATEMENT OF POLICY

### Definition of “Employees” Under This Policy

For purposes of this policy only, the term “employees” includes all full, part-time, and as-need City employees regardless of appointment type, volunteers, interns, and City fellows (such as San Francisco Fellows, McCarthy Fellows, Fish Fellows, and Willie Brown Fellows).

### Requirement to Report Vaccination Status

To protect the City’s workforce and the public that it serves, all City employees were required to report their vaccination status to the City by July 29, 2021 (with a subsequent extension to August 12, 2021), by providing the following information:

- Whether the employee is vaccinated (yes or no)
- For employees who are vaccinated or partly vaccinated:
  - The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson, or other vaccine received in approved clinical trials)
  - Date of first dose vaccine;
  - Date of second vaccine for a 2-dose vaccine;
  - Declaration under penalty of perjury that they have been fully vaccinated, and
  - Upload documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee’s healthcare provider, or documentation issued by the State of California by going to:  
<https://myvaccinerecord.cdph.ca.gov/>

To be fully vaccinated, 14 days must have passed since an employee received the final dose of a two-shot vaccine or a dose of a one-shot vaccine. All unvaccinated employees must continue to comply with masking, testing, and other safety requirements until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy. Employees who previously reported that they were unvaccinated must update their status once they are fully vaccinated.

Failure to comply with the reporting requirement may result in discipline, or non-disciplinary separation from employment with the City for failure to meet the minimum qualifications of the job.

### **How to Report Vaccination Status**

Volunteers, interns, and City fellows must verify that they are fully vaccinated to the Departmental Personnel Officer or Human Resources professional by showing a copy of their CDC COVID-19 Vaccination Record Card, documentation from the individual's healthcare provider, or documentation issued by the State of California as described above. The department must retain documentation that the individual's vaccination status has been verified **but must not retain copies of the individual's vaccination record.**

All other employees must report their vaccination information and upload documentation verifying that status into the City's People & Pay system using the Employee Portal or by hand using the COVID-19 Vaccination Status Form. Only City employees authorized to access employee personnel information will have access to the medical portion of the file. The City will share information about an employee's vaccination status only on a need-to-know basis, including to the employee's department, managers, and supervisors for the purpose of enforcing masking, quarantining in the event of a close contact, and other safety requirements.

### **Vaccination Requirements for Employees**

1. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees routinely assigned to or working onsite in high-risk settings must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who are routinely assigned to or working onsite in high-risk settings. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

2. To comply with the CDPH Health Care Worker Requirement and ensure delivery of City services, City policy requires that all City employees who are not otherwise covered by the SF Health Order, but who provide services or work in the health care facilities identified in the state's order, must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious-beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees provide services or work in the health care facilities identified in the state's order. Those employees who fail to meet the vaccination and reporting requirements under this Policy

will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

3. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time must be fully vaccinated — no later than October 13, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and therefore unable to perform an essential function of their job and will not meet the minimum requirements to perform their job.

4. Volunteers, interns, and City fellows must be fully vaccinated – and must have reported that status and providing documentation verifying that status to the Departmental Human Resources personnel – as a condition of serving as a City volunteer, intern or fellow. Those already working and who do not fall under the SF Health Order must be fully vaccinated no later than October 13, 2021. Failure to comply with this policy will result in suspension of the internship, fellowship, or volunteer opportunity until such time as the individual provides verification that they are fully vaccinated.

5. All other City employees must be fully vaccinated as a condition of employment within ten weeks after the FDA provides final approval to at least one COVID-19 vaccine (November 1, 2021), unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee with an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. Once the vaccination deadline is reached (November 1, 2021) the vaccination and reporting requirements are conditions of City employment and a minimum qualification for all City employees.

Failure to comply with this Policy may result in a disciplinary action, or non-disciplinary separation from employment for failure to meet the minimum qualifications of the job.

### **Requesting an Exemption from the Vaccination Requirement**

Employees with a medical condition or other medical restriction that affects their eligibility for a vaccine, as verified by their medical provider, or those with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation to be excused from this vaccination requirement but must still report their status by the August 12, 2021 extended deadline. The City will review requests for accommodation on a case-by-case basis and engage in an interactive process with employees who submit such requests. For some

positions where fully vaccinated status is required to enter the facility where the employee works, an accommodation may require transfer to an alternate vacant position, if available, in another classification for which the employee meets the minimum qualifications. Requests for Reasonable Accommodation forms and procedures can be found here: <https://sfdhr.org/new-vaccine-and-face-covering-policy-city-employees>

## COVID-19 VACCINATION COMPLIANCE DEADLINES ADDENDUM TO VACCINATION POLICY AMENDED AUGUST 5, 2021

Below are the vaccination status reporting deadlines for City employees.

COVID-19 VACCINATION STATUS REPORTING DEADLINES	
<b>July 29, 2021</b>	Reporting Deadline
<b>August 12, 2021</b>	Grace Period - Final day to report vaccination status

Below are the vaccination deadlines for City employees. City employees working in high-risk settings are subject to non-disciplinary release if not vaccinated by the deadlines referenced below for failure to meet the minimum qualifications of their jobs.

COVID-19 VACCINATION DEADLINES BY EMPLOYEE TYPE	
<b>Employees who are assigned to or routinely work onsite in High-Risk Settings or other Health Care Facilities</b>	Must receive their final dose of a vaccine regimen <i>no later than</i> <b>September 30, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 2, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 9, 2021; Second shot <i>no later than</i> September 30, 2021.</li> <li>• <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> September 30, 2021</li> </ul>
<b>Employees intermittently or occasionally working in “High-Risk Settings”</b>	Must be fully vaccinated <i>no later than</i> <b>October 13, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First Shot <i>no later than</i> September 1, 2021; Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Pfizer:</b> First Shot <i>no later than</i> September 8, 2021; Second Shot <i>no later than</i> September 29, 2021</li> <li>• <b>Johnson &amp; Johnson:</b> First Shot <i>no later than</i> September 29 2021</li> </ul>
<b>All other employees not working in “High-Risk” or other health care settings</b>	Must be fully vaccinated <i>no later than</i> <b>November 1, 2021</b> . <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 20, 2021; Second shot <i>no later than</i> October 18, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 27, 2021; Second shot <i>no later than</i> October 18, 2021.</li> </ul> <b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> October 18, 2021