

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

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| AGENDA TITLE: | Discussion of COVID-19 Mandatory Vaccination Policies - Sponsored by Mayor Hall |
| DEPARTMENT: | City Manager's Office |
| PRESENTED BY: | John Norris, Assistant City Manager |
| ACTION: | <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing |

PROBLEM/ISSUE STATEMENT:

Per the Council Rules of Procedure Section 3.2.D, the Mayor can place an item on a City Council meeting agenda. Mayor Hall requested the City Manager to schedule a Council discussion to direct the City Manager to establish a mandatory COVID-19 vaccination policy for City employees. The Mayor also requested that Council discuss establishing a mandatory vaccination policy for in-person attendance at any council meeting or indoor event sponsored by the City.

RESOURCE/FINANCIAL IMPACT:

The primary resource impact will be staff time to develop mandatory COVID-19 vaccination policies if the Council directs staff to proceed with preparing documents for such a policy. There could be a financial cost related to any vaccination incentive programs that the City decides to undertake.

RECOMMENDATION

Staff recommends that the Council discuss if they would like to pursue adopting mandatory COVID-19 vaccination policies for City employment and for in-person participation at City Council meetings or indoor events sponsored by the City. Currently, the City Manager does not recommend that the City Council consider adoption of any mandatory COVID-19 vaccination policies.

Approved By: City Manager **DT** City Attorney **MK**

BACKGROUND

To date, the City Manager has not recommended a mandatory COVID-19 vaccination policy as a condition of City employment, nor has the City Manager brought forward a recommendation to the City Council to consider a mandatory COVID-19 vaccination policy for in-person attendance at City Council meetings or indoor events sponsored by the City. The City Manager previously distributed a City Attorney-Client communication to the City Council regarding COVID-19 vaccination questions.

Per the Council Rules of Procedure Section 3.2.D, the Mayor can place an item on a City Council meeting agenda. Mayor Hall requested the City Manager to schedule a Council discussion to direct the City Manager to establish a mandatory COVID-19 vaccination policy for employees. Also, the Mayor requested that Council discuss establishing a mandatory vaccination policy for in person attendance at any Council meeting or indoor event sponsored by the City.

On December 11, 2020, the U.S. Food and Drug Administration (FDA) issued the first emergency use authorization (EUA) for the Pfizer-BioNTech COVID-19 vaccine for individuals 16 years of age and older. On May 10, 2021, the FDA expanded the EUA for the Pfizer-BioNTech COVID-19 Vaccine to include adolescents 12 through 15 years of age. On December 18, 2020, the FDA issued an EUA for the Moderna COVID-19 for individuals 18 years of age and older. As well, on February 27, 2021, the FDA issued an EUA for the Janssen (Johnson & Johnson) COVID-19 Vaccine for use in individuals 18 years of age and older. On April 23, 2021, the FDA amended the EUA of the Janssen COVID-19 vaccine to include information about a very rare and serious type of blood clot in people who receive the vaccine.

On March 31, 2021, Governor Jay Inslee announced that effective April 15, 2021, all Washingtonians age 16 and up were eligible to receive a COVID-19 vaccination. The Centers for Disease Control (CDC), the State of Washington, and Public Health – Seattle & King County all advise that eligible individuals should get vaccinated, as having a significant portion of the population vaccinated will be the only way to curb the COVID-19 pandemic. Vaccination supply and accessibility has been greatly improved over the last two months allowing most people to have access to vaccinations if they desire. There is on-going work to ensure that accessibility is not a roadblock for the public. While many large vaccination sites are starting to close, pop-up vaccination events and mobile vaccination units are ramping up to go to places where there are still people unvaccinated in our communities. Recently the State of Washington has even announced an incentive program to encourage more people to get vaccinated, including lottery drawings.

To date, neither the Federal nor State government have issued any COVID-19 vaccination mandates. Some universities have announced mandatory vaccination policies for staff and students and some tourism-based employers have announced mandatory employment vaccination requirements. City staff could not identify any State government agency (except universities), county, school district or municipal

government in the State of Washington that has adopted a mandatory COVID-19 vaccination policy as a requirement for employment or for in-person attendance at a facility. The City of Issaquah has recently adopted a policy, agreed to by their unions, that all new employees must provide vaccination verification, but existing employees are grandfathered into this policy.

In talking with other King County cities, many stated that they preferred to incentivize vaccination for employees through education and encouragement. Some cities had concerns on the impacts of a mandatory policy for those who are distrustful of government and/or have concerns about the safety of vaccinations – especially for some racial/ethnic groups. Others were not ready to proceed with a process to bargain impacts of a mandatory vaccination policy with their unions, and many cited the concern of anticipated litigation as a reason for not moving forward with a mandatory vaccination policy at this time.

Although the COVID-19 vaccines have been approved for use to address the pandemic emergency through the FDA EUA, given that the vaccines have only been used over a relatively short time, there may still be unknown implications of the vaccine that could develop over time. For this reason, some individuals may be hesitant to proceed with vaccination or may be concerned with mandatory policies prior to the FDA giving full authorization for use of the vaccines. At the same time, there has been no requirement from the U.S. Equal Employment Opportunity Commission (EEOC) that would require that the City make special accommodation for those choosing to delay vaccination until full FDA approval is given.

As of the writing of this staff report, nearly 79% of residents in the North Seattle and Shoreline region that are age 12 and over have received at least one dose of vaccine. Public Health – Seattle King County has recently stated that 97% of new COVID cases are amongst unvaccinated persons.

On May 21, 2021, the Washington State Department of Labor and Industries (L & I) issued mask and distancing requirements to employers that are aligned with the vaccination status of an employee (Attachment A). The new regulations are intended to help employers adapt masking policies to meet new CDC guidelines. The regulations require that if an employer allows for employees to be unmasked in the workplace, then the employer must be able to demonstrate that they have verified vaccination status for those workers not masked or physically distanced.

In compliance with these regulations, the City has updated our workplace protocols to allow fully vaccinated employees to be unmasked when working at their workstations and when working outdoors. Employees must provide proof of vaccination to the Human Resources Department, who will retain the information for verification purposes. An employee who does not provide proof of vaccination will be required to be masked at all times when in the workplace regardless of whether they work indoors or outside. The City will require all employees to wear facial masks when in all common areas indoors (i.e., City Hall lobby, restrooms, conference rooms, etc.), regardless of

vaccination status. As of June 11, 2021, 116 employees had already provided their proof of vaccination to the Human Resources Department. Staff anticipates that more employees will provide this information as they start to return to on-site work. Currently, the City has 184 regular employees and 110 extra-help/seasonal employees. This does not include the City's Police Department, given that they are King County employees.

DISCUSSION

Mandatory Vaccination as Condition of Employment

The City Attorney has opined that the City can require employees to get vaccinated and make this a condition of employment. This is subject to compliance with requirements of the EEOC, the Occupational Safety and Health Administration (OSHA), and the Fair Labor Standards Act (FLSA). A mandatory vaccination policy for employees as a condition of employment could bring legal challenges resulting in litigation for the City in the future.

The EEOC's guidance notes that any vaccination mandates are subject to the application of federal anti-discrimination laws, including the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII). The EEOC advised that while these laws do not prohibit employer-mandated COVID-19 vaccinations per se, they do require employers to undertake individualized risk assessments and offer reasonable accommodations to protect the legal rights of employees who cannot or will not be vaccinated for medical or religious reasons.

Employers must be aware that imposing COVID-19 vaccination requirements may screen out, or tend to screen out, employees with disabilities and may exclude such unvaccinated employees from the workplace. Before excluding unvaccinated employees from the workplace, employers must first determine that unvaccinated employees would pose a "direct threat" of "significant risk of substantial harm to the health or safety" of other individuals. Even if an employer shows that an unvaccinated employee poses a direct threat to the health or safety of themselves or others, the City still has a general obligation to accommodate disabilities under the ADA.

Another exception to mandating vaccinations is if an employee objects to receiving a mandatory vaccine because of a sincerely held religious belief, practice, or observance. In such a situation, Title VII (like the ADA) requires an employer to explore whether a reasonable accommodation that does not pose an undue hardship might be possible.

If the City were to implement mandatory vaccination, the City's duty to reasonably accommodate under state and federal requirements will necessarily impact the City's ability to have everyone vaccinated if a reasonable accommodation can be made without causing the City "undue hardship".

One of the consistent messages from public health is that the wearing of face coverings and maintaining of social distance can be significant deterrents to the spread of COVID-19 and especially for those unvaccinated. Required wearing of facial masks and social

distancing could also be potential ways to provide reasonable accommodation for those who chose not to be vaccinated for religious or medical reasons. Since the City is already requiring unvaccinated individuals to wear face coverings and always maintain social distance in the workplace, it does not seem that having a mandatory vaccine policy will significantly change the working conditions that the City Manager is implementing absent a mandatory vaccine policy.

In early June, the Human Resources Department conducted a vaccination survey for the City's regular employees. A total of 155 regular employees responded to the survey. Of those responding, 139 employees, or 90%, were fully vaccinated, five (5) employees, or 3%, would be fully vaccinated by June 30th, one (1) employee, or 1%, would be fully vaccinated by July 31st, and 10 employees, or 6%, did not know when or if they would get vaccinated. Of the 10 employees who indicated that they were not vaccinated, four (4) indicated that they were waiting for full FDA approval of vaccines, one (1) was not getting vaccinated for religious reasons, one (1) was not getting vaccinated for medical reasons, and one (1) said it was too difficult to get vaccinated.

Mandatory Vaccination Policy for In-Person Attendance at Council Meetings or Indoor City-Sponsored Events

Again, the City Attorney has opined that the Council could require proof of vaccination for in-person attendance at City Council meetings and other indoor in-person events sponsored by the City. Many of the same issues discussed in the previous section of this staff report would apply to this policy. This includes providing accommodations in accordance with the ADA and that the City complies with any applicable provisions of the Civil Rights Act or any other applicable state and federal anti-discrimination laws. Obviously, children under the age of 12 are not yet eligible to be vaccinated so they would need to be exempted from any mandatory vaccination policy until they have an opportunity to be vaccinated.

It is important to also note that public health has reported that vaccination rates in certain groups have lagged as individuals try to assess and understand the safety of the vaccines. A mandatory vaccination policy could be perceived as another barrier or viewed as a form of discrimination based on someone's race, color, national origin, or religious beliefs.

Council should be aware that there could be some additional challenges that could be raised in relation to public meetings and the requirements under the Open Public Meetings Act (OPMA) to allow public access to certain meetings without preconditions.

The City has been providing Council Meetings virtually and conducting several public input processes (Open Houses, Forums, etc.) virtually since the pandemic started. These virtual offerings provide access for all who have internet and computer access. Staff has been exploring upgrading City Hall facilities to support "hybrid" meetings so that both in-person and virtual access can be provided. It is likely that this will continue to take some time to implement, although staff is hopeful that we can get the Council Chambers upgraded for this purpose during the fall of 2021, along with some of the

other City Hall conference rooms. This may be help provide the accommodation necessary for real time public participation for meetings/events that occur in City Hall if Council were to implement a mandatory vaccination verification for in-person meetings.

If Council chooses to implement a mandatory vaccination policy, then staff would need to ensure that there was a method for vaccination verification for individuals coming in person. Given that there is currently no uniform system that one can utilize that would demonstrate vaccination, it would be mostly an honor system that would rely on the good faith of those that attend meetings to provide accurate proof of vaccination.

As Council is aware, the City will be reopening City Hall for public access on July 6, 2021. This "Phase 1" opening will have some limitations as we will not allow outside groups to use conference rooms or allow individuals/groups to access the public art exhibits throughout City Hall. Rather, the City is limiting public access for business purposes only. We will continue to provide services virtually in many cases. We anticipate our "Phase 2" opening of City Hall to occur on September 7th, and this may bring us closer to having City Hall operations mirror pre-pandemic times.

Other facilities, such as the City's Spartan Recreation Center, have already started offering programs by appointment and pre-registration. All public health guidance is being followed including the requirement of wearing face coverings, regardless of vaccination status. Currently, the City is not requiring proof of vaccination for access to or participation in programs held indoors at City facilities.

ALTERNATIVES ANALYSIS

The City Manager has consistently stated to employees that the City wants all employees, that can, to be vaccinated. The City Manager has implemented policies that allow staff to use paid time to get vaccinated and the same if an employee needs time to recover from a reaction to the vaccine. The Human Resources Department has continued to provide information on how to find vaccine locations, available appointments, and once the vaccination site opened in Shoreline, employees were encouraged to take advantage of getting vaccinated at that location. The Shoreline Fire District has also made vaccines available to Shoreline employees prior to the opening of the vaccination site at the Shoreline Center.

The City Manager believes that continuing to educate and encourage employees to get vaccinated is a better approach than a mandatory policy, at least at the current time. Some private companies are using financial rewards to incentivize employees to be vaccinated, including cash payments or other incentives. The City of Issaquah has recently announced that they are providing an extra day off for all employees that have provided proof of vaccination.

Staff could continue to seek other incentives to encourage individuals to get vaccinated. For example, the City could consider something like the City of Issaquah and offer an additional day off for those who have provided proof of vaccination, or set a target for

overall employee vaccination status (i.e., 80% of employees vaccinated) and if that is achieved, then the City would provide a day off for everyone or for those who have been vaccinated. There may be other incentives to continue to encourage all employees to get vaccinated.

As previously stated, staff has been working with vendors to improve the City's capacity to offer "hybrid" public meetings. This should allow the City to provide more access for community members to participate in meetings in-person and virtually. In fact, allowing virtual participation has been one of the positive outcomes from the pandemic. Staff does recommend that Council should not institute a mandatory vaccination policy for in-person attendance at City Council or other indoor city-sponsored events until such time as we have a consistent way to provide access virtually for those who are not vaccinated. An alternative that could be considered, at least for those meetings where individuals will be seated, would be to have designated seating areas for those vaccinated, like what is occurring with some sporting events.

SUMMARY

The City Attorney has opined that mandatory vaccination policies are legally permissible as a condition for employment and as a condition for the public to attend in-person meeting and events, provided that it is subject to exceptions for medical purposes and religious beliefs. Mandatory vaccination policies are subject to legal challenges and may result in future litigation for the City. The City would need to bargain the impacts of a mandatory vaccination policy for employment with the City's Maintenance Worker Union.

Having a mandatory vaccination policy for employment or attendance at public meetings is not currently a common practice for employers in the State of Washington. It may be a question of timing. There is much being done to incentivize individuals to get vaccinated throughout the State and this appears to be the focus of many private and public employers. Continuing to seek ways to encourage vaccination should continue as the road to ending the pandemic really is through having people vaccinated.

Implementation of public health guidance such as the wearing of face coverings and social distancing will continue in City operations both for employees and members of the public who access city services in person.

The City Manager does not recommend moving forward with mandatory vaccination policies. Although this is the case, the City Council may disagree with the City Manager, and could direct staff to prepare documents to adopt a mandatory vaccination policy for employment and for the in-person attendance of members from the public for City Council meetings and indoor events sponsored by the City.

RESOURCE/FINANCIAL IMPACT

The primary resource impact will be staff time to develop mandatory COVID-19 vaccination policies if the Council directs staff to proceed with preparing documents for such a policy. There could be a financial cost related to any vaccination incentive programs that the City decides to undertake.

RECOMMENDATION

Staff recommends that the Council discuss if they would like to pursue adopting mandatory COVID-19 vaccination policies for City employment and for in-person participation at City Council meetings or indoor events sponsored by the City. Currently, the City Manager does not recommend that the City Council consider adoption of any mandatory COVID-19 vaccination policies.

ATTACHMENT

Attachment A – Washington State Dept. of Labor and Industries Mask and Distancing Requirements – May 21, 2021

Mask and Distancing Requirements Are Changing:

Key COVID-19 Updates for Fully Vaccinated Workers (May 21, 2021)

Updated state COVID-19 workplace safety and health guidance from the Washington Department of Labor & Industries (L&I) at www.Lni.wa.gov, will help employers adapt masking policies to meet new CDC guidelines (www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html) adopted by Governor Jay Inslee.

What's new:

- Fully vaccinated employees do not have to wear a mask or socially distance at work, unless their employer or local public health agency still requires it.
- Before ending mask and social distance requirements, employers must confirm workers are fully vaccinated — by having the worker either sign a document attesting to their status or provide proof of vaccination.
- Employers must be able to demonstrate they have verified vaccination status for workers who are not masked or physically distanced. Verifications methods may include:
 - Creating a log of workers who have verified they've been vaccinated and the date of verification,
 - Checking vaccination status each day as workers enter a jobsite,
 - Marking a worker's badge or credential to show that they are vaccinated, or
 - Other methods demonstrating an employer has verified worker vaccination status may also meet the standard.
- When verifying an employee's vaccine status, acceptable documentation includes a CDC vaccination card, a photo of the card, documentation from a health care provider, a signed attestation from the worker, or documentation from the state immunization information system.

- Evidence of the verification system must be available to L&I upon request.

What's staying in place:

- Employers may still require mask use if they choose, and with some exceptions (<http://lawfilesexet.leg.wa.gov/biennium/2021-22/pdf/Bills/Session%20Laws/Senate/5254-S.SL.pdf>), employers must allow employees to wear a mask or other protective equipment if they choose to, regardless of vaccination status.
- If an employee is not fully vaccinated or their vaccination status is unknown, employers must continue to require masks and social distancing.
- The new guidance does not change masking rules for health care settings like hospitals, long-term care, or doctor's offices; correctional facilities, homeless shelters, schools, child care centers or day camps. And the federal order requiring masks on public transportation remains in place.
- Employers cannot fire or discriminate against an employee who is at high risk of contracting COVID-19 and is seeking accommodation that protects them from COVID-19 exposure.
- Unvaccinated individuals are still required to wear face coverings in all public spaces.

Employers are encouraged to check with their local public health agency, which may have more stringent requirements or recommendations.

For more information on enforcement policies:

- Visit www.Lni.wa.gov/DD170 and www.Lni.wa.gov/DD1180.
- Read L&I's COVID-19 Workplace Safety Requirements at www.Lni.wa.gov/go/F414-164-000 and www.Lni.wa.gov/go/F414-169-000.

PUBLICATION F414-179-000 [05-2021]