



ERIC GARCETTI
MAYOR

MEMORANDUM

To: All City Department Heads

From: Eric Garcetti, Mayor *EG*

Subject: **City of Los Angeles Response to the COVID-19 Pandemic:
Re: Mandatory Implementation of Non-Compliance with the
Requirements of Ordinance No. 187134 (“COVID-19 VACCINATION
REQUIREMENT FOR ALL CURRENT AND FUTURE CITY
EMPLOYEES”)**

Date: October 28, 2021

Taking strong and definitive action to protect the health and safety of our constituents and co-workers is the first and highest responsibility of leaders in the government of the City of Los Angeles.

On August 18, 2021, the City Council adopted Ordinance [187134](#) (“COVID-19 Vaccination Requirement For All Current and Future City Employees”). The Ordinance requires all current and future City employees, as a condition of City employment, to report their vaccination status no later than October 19, 2021, and to be fully vaccinated for COVID-19 or request an exemption for medical or religious reasons by October 19, 2021 (the “Mandatory Reporting and Vaccination conditions of employment”).

On October 26, 2021, the City Council adopted “Resolution Implementing Consequences for Non-Compliance with the Requirements of Ordinance No. 187134,” attached hereto as **Exhibit A** (see also Council File No.: 21-0921), which provides for the implementation of the provisions contained in Ordinance 187134 and as detailed in the City’s last, best and final offer (“LBFO”) issued on October 14, 2021, including requiring that all City employees be fully vaccinated or submit an exemption no later than

December 18, 2021. A copy of the LBFO is attached hereto as **Exhibit B** (see also Council File No.: 21-0921).

Implementing the City's employee vaccination mandate is critical to protecting the health and safety of our workforce and the Angelenos we serve. The ongoing COVID-19 pandemic has created a catastrophic public health emergency. Unvaccinated City employees who remain in the workplace and interact with the public and fellow City employees pose an imminent threat to public health and workplace safety.

Pursuant to Section 231(a) of the Los Angeles City Charter and the October 26, 2021 Council Resolution, **I hereby direct as follows:**

Effective immediately, all Department Heads as appointing authorities, including all Board and Commission members, General Managers, Directors and Administrators of Departments, Offices, Bureaus and Agencies shall:

- Immediately implement the terms and conditions of the City's October 14, 2021 LBFO regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment. The LBFO is attached hereto as **Exhibit B** (see also Council File No.: 21-0921).
- Issue a *Notice of Mandatory COVID-19 Vaccination Policy Requirements*¹ to each employee who is unvaccinated and has not filed an exemption form. The employee will have 24 hours to review the notice or 48 hours if they request time to consult with a union representative.
 - If the employee signs the notice, then the mandatory COVID-19 testing protocols Nos. 1-5, as outlined in the LBFO, shall begin immediately after the Personnel Department distributes information and protocols. The mandatory COVID-19 testing protocols are currently scheduled to begin the week of November 7, 2021.
 - If the employee refuses to sign the notice, then the employee shall be placed off duty without pay pending service of a Skelly package that includes a Notice of Proposed Separation. Sworn employees shall be subject to applicable Board of Rights proceedings.
- Issue a *Notice of Mandatory COVID-19 Vaccination Policy Requirements -- While Awaiting an Exemption/Appeal Determination*² to each employee who is unvaccinated and has filed an exemption form. The employee will have 24 hours

¹ A copy of this Notice will be circulated by the Personnel Department on October 28, 2021.

² A copy of this Notice will be circulated by the Personnel Department on October 28, 2021.

to review and sign the notice or 48 hours if they request time to consult with a union representative.

- If the employee signs the notice, the mandatory COVID-19 testing protocols Nos. 2-5, as outlined in the LBFO, shall begin immediately after the Personnel Department distributes information and protocols. The mandatory COVID-19 testing protocols are currently scheduled to begin the week of November 7, 2021.
- If the employee refuses to sign the notice, then the employee shall follow the same testing regimen as outlined in the COVID-19 testing protocols Nos. 2-5 outlined in the LBFO. Employees in this category shall test on paid time and at City expense, except that the City shall issue an invoice for the cost of testing.
- On December 19, 2021, or the first business day thereafter, immediately begin the corrective action process outlined in the LBFO for each employee who remains non-compliant as of the end of the day on December 18, 2021. An employee that remains out of compliance shall be placed off duty without pay pending service of a Skelly package that includes a Notice of Proposed Separation. Sworn employees shall be subject to applicable Board of Rights proceedings.

**RESOLUTION IMPLEMENTING CONSEQUENCES FOR
NON-COMPLIANCE WITH THE REQUIREMENTS OF ORDINANCE NO.
187134 (“COVID-19 VACCINATION REQUIREMENT FOR ALL
CURRENT AND FUTURE CITY EMPLOYEES”)**

WHEREAS, on March 6, 2020, the Los Angeles City Council ratified the Mayor’s Declaration of Local Emergency, dated March 4, 2020, wherein he declared that conditions of disaster or extreme peril to the safety of persons have arisen both internationally and within the United States, including in the City of Los Angeles, as a result of the introduction of the novel coronavirus (“COVID-19”), a novel communicable disease first detected in Wuhan City, Hubei Province, China in December 2019;

WHEREAS, the City Council has repeatedly renewed the Mayor’s March 4, 2020 Declaration of Local Emergency, most recently on September 21, 2021;

WHEREAS, extensively during the period of this local emergency, the Mayor of Los Angeles has exercised his emergency authority under the Los Angeles Administrative Code Section 8.29 by issuing Public Orders and Directives to City Departments in furtherance of the ongoing need to preserve life and property of individuals living and working in the City;

WHEREAS, the COVID-19 pandemic continues to change and evolve, and such emergency orders and directives will continue to be necessary;

WHEREAS, on July 28, 2021, the City Council adopted a motion directing the City Administrative Officer (CAO), the Chief Legislative Analyst, the City Personnel Department, and the City Attorney, in consultation with labor representatives, to report back on a proposed policy to require that all City employees and contractors, as a condition of employment, (1) be fully vaccinated for COVID-19; and (2) report their COVID-19 vaccination status to the appropriate City department, with the goal of protecting the City’s workforce and the public it serves;

WHEREAS, compulsory vaccination during a public health emergency falls squarely within the City’s police powers under Article XI, Section 7 of the California Constitution;

WHEREAS, compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases;

WHEREAS, vaccination is the most effective way to prevent the spread of COVID-19 and to limit COVID-19 hospitalizations and deaths;

WHEREAS, on August 5, 2021, the City Council’s Executive Employee Relations Committee (“EERC”) convened to discuss the development of a mandatory COVID-19 vaccination policy, instructing the CAO to prepare a mandatory vaccination policy and to

begin meeting and conferring with City labor organizations on the negotiable impacts of such a policy;

WHEREAS, on August 6, 2021, the CAO initiated negotiations with the City labor organizations, and the input and feedback from those discussions was communicated and discussed with the EERC, and taken into consideration in a recommendation to the full City Council which, on August 18, 2021, adopted Ordinance 187134 ("COVID-19 VACCINATION REQUIREMENTS FOR ALL CURRENT AND FUTURE CITY EMPLOYEES");

WHEREAS, the Ordinance, which became legally effective August 24, 2021, requires all current and future City employees, as a condition of City employment, to report their vaccination status no later than October 19, 2021, and to be fully vaccinated for COVID-19 or request an exemption for medical or religious reasons by October 20, 2021 (the "Mandatory Reporting and Vaccination conditions of employment");

WHEREAS, as of October 18, 2021, out of a total of 53,168 City employees, 37,524 employees have reported their status as "fully vaccinated", 1,250 employees have reported their status as "partially vaccinated", 4,872 employees have reported their status as "not vaccinated", 1,839 employees have reported their status as "decline to state", and 7,683 employees have failed to report their status;

WHEREAS, as of October 18, 2021, 5,388 City employees have filed Notices of Intent to request a medical or religious exemption from the mandatory vaccination requirement;

WHEREAS, employees who fail to report their vaccination status by October 19, 2021, including those employees who report their status as "decline to state", will be treated as unvaccinated;

WHEREAS, between August 18, 2021 and October 18, 2021, the CAO has continued to meet and confer with City labor organizations over the negotiable impacts of the Ordinance, including the consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, on October 1, 2021, as part of the meet and confer process, the City made a written proposal to City labor organizations on a set of proposed consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, counter proposals from various labor organizations were received, discussed, and portions used as the basis of revised recommendations made by the CAO to the EERC to modify the City's October 1, 2021 proposal;

WHEREAS, on October 12, 2021, at a special meeting, the EERC considered alternatives and continued its ongoing consideration of proposals, input, and feedback

from labor organizations regarding the implementation of potential consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment;

WHEREAS, the EERC recessed its October 12, 2012 special meeting to give the CAO an opportunity to meet that same day with all labor principals and provide them with an update on the EERC's deliberations, and to provide counter proposals, as instructed by the EERC, to labor organizations that had countered the City's October 1, 2021 proposal;

WHEREAS, after the EERC recessed its October 12, 2021 meeting, the CAO issued the City's written counter-proposals to the various labor organizations that had countered the City's October 1, 2021 proposal;

WHEREAS, at the October 12, 2021 all-labor principals meeting, the CAO continued to solicit input from labor organizations who had not yet provided counter proposals and to encourage them to do so and schedule meetings as soon as possible;

WHEREAS, following the October 12, 2021 all-labor principals meeting, further counter proposals, input, and feedback were solicited and received by the CAO, and the City's October 12, 2021 counter proposals were further modified by the CAO to address concerns and issues raised by labor organizations;

WHEREAS, on October 14, 2021, the EERC reconvened its recessed meeting to give final consideration to the CAO's further revised set of recommendations, which incorporated additional information/recommendations solicited and received from City labor organizations, and to issue final bargaining instructions;

WHEREAS, given the entirety of the bargaining process and the EERC's deliberations, the EERC believes it has done its best to incorporate as much feedback as possible that allows the City to move in the desired direction as stated in the Ordinance, and to protect the City's workforce and the public that it serves through a fully vaccinated workforce while giving all due consideration to the myriad points and concerns raised by the City's responding labor organization partners;

WHEREAS, the City would be subjected to a significant financial burden if it had to provide a weekly testing option for all unvaccinated City employees, or place all unvaccinated City employees on paid leave, while simultaneously paying overtime to cover staffing shortages resulting from their absence. Either option would seriously compromise the City's ability to meet its ongoing financial obligations and adequately provide essential public services to the public;

WHEREAS, on October 14, 2021, at the EERC's direction, the CAO issued to the labor organizations the City's Last, Best and Final Offer ("October 14, 2021 LBFO") regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, which is attached as Attachment 1; and

WHEREAS, various City labor organizations have entered into agreements with the CAO acknowledging and/or agreeing that: (1) during the development and after the adoption of the Ordinance, the parties engaged in the meet and confer process over the impacts of the Ordinance and the implementing procedures; (2) the parties have concluded the meet and confer process in good faith; and (3) the City will implement the terms and conditions set forth in its October 14, 2021 LBFO.

NOW, THEREFORE, the Los Angeles City Council, RESOLVES that:

1. An emergency pursuant to Government Code section 3504.5 and Los Angeles Administrative Code Section 4.850 (b) exists and therefore this Order shall become effective immediately;
2. The City and its labor organizations have reached a stalemate in negotiations on the consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, and therefore the CAO, in consultation with the City Attorney, is instructed to file a Notice of Impasse with the City's Employee Relations Board;
3. The City cannot wait for exhaustion of collective bargaining impasse procedures (which take up to a year to complete) to address the imminent threat to public health and safety and workplace safety posed by allowing unvaccinated City employees to remain in the workplace and to continue to interact with the public and other City employees;
4. The ongoing COVID-19 pandemic, with new variants, including those yet to emerge in the City, has created a catastrophic public health emergency beyond the City's control sufficient to excuse the City from its normal duty to complete the meet and confer process prior to acting on its decision to impose consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment, as set forth in the City's October 14, 2021 LBFO;
5. There is a compelling need for such unilateral action to protect public health and safety and workplace safety, especially with regard to the City's unvaccinated first responders who regularly interact with vulnerable members of the public while performing their duties; and
6. Effective immediately, the Mayor through the appointing authorities shall implement the terms and conditions set forth in the City's October 14, 2021 LBFO regarding consequences for non-compliance with the Mandatory Reporting and Vaccination conditions of employment.

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Consequences Presented October 14, 2021

General Provisions¹

The procedures described herein shall apply only to corrective action for violations of Ordinance No. 187134 (“COVID-19 Vaccination Requirement for All Current and Future City Employees”) and shall not apply to violations of other City policies or MOU provisions.

Any corrective action that results from implementation of these procedures will not be considered in future disciplinary decisions for violations outside of Ordinance No. 187134.

Any employee who is terminated for non-compliance with the City’s COVID-19 vaccination requirement shall not be prohibited from seeking reemployment with the City, subject to any COVID-19 vaccination requirement(s).

For sworn employees employed by the Los Angeles Police Department (LAPD), those employees must also pass all required reinstatement background processes conducted by the City or LAPD and can only be reinstated to a position as governed and permitted by the Civil Service Rules of the City of Los Angeles.

The City shall continue in its efforts to provide fact-based education to all City employees, regardless of vaccination status, about the benefit of the COVID-19 vaccination. The City will undergo all efforts to ensure that information is provided to the entire workforce, including in person informational sessions.

An employee who is on an approved leave of absence prior to and returns to work after October 20, 2021, shall have: 24 hours from the date of their return to work to report their vaccination status if their status had not been reported; and, 10 business days from the date of their return to work to file an intent to seek a medical or religious exemption if they so choose. If an employee fails to report their vaccination status within the 24-hour period or declare an intent to file an exemption within the 10-business day period, they shall be non-compliant with the vaccination mandate.

If the City Council determines that the safety protocols and measures instituted around and to address the COVID-19 pandemic as contained in the Ordinance are no longer necessary to preserve the health, safety, and wellbeing of the City’s workforce and the public it serves, and as a result revokes or rescinds the declared emergency regarding the COVID-19 pandemic, the City Council may (can’t pre-commit future City Council) suspend the provisions of the Ordinance, except that the City shall require all employees hired after that point in time to be vaccinated from COVID-19.

¹ With minor modifications with regard to police sworn to achieve conformity with City Charter provisions applicable only to them. EE

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Non-Compliance with the Vaccination Mandate

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

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

Each employee issued a Notice shall be required to sign the Notice and to comply with its terms as outlined above and herein. Failure to sign or comply with the requirements of the Notice shall constitute failure to meet a condition of employment and shall result in appropriate and immediate corrective action.

During the time period between October 20 and December 18, 2021, when an employee is undergoing the vaccination process, they will be responsible for contacting the City to update their vaccination status, i.e., from unvaccinated to partially vaccinated and from partially vaccinated to fully vaccinated.

The following terms (1 – 5 below) shall apply to an employee who is not fully vaccinated and who has agreed to the terms of the Notice.

1. An employee shall assume responsibility for using their own compensated time to manage an absence from the workplace due to COVID-19 infection or exposure. This does not preclude an employee from filing a claim for workers' compensation benefits, as appropriate;
2. The employee must test for COVID-19 twice per week;
3. To facilitate the testing process for the employee and ensure that test results are reported accurately and timely, all testing shall be administered by the City or a vendor of the City's choosing. The employee shall be required to test through the City or its vendor. No third-party tests shall be substituted for tests provided for by the City or its vendor;

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4. The employee shall reimburse the City \$260 per pay period for four tests at \$65 each. Reimbursement shall be made on a biweekly basis through an employee's paycheck, e.g., through a negative payroll deduction; and
5. The employee shall test on their own time, i.e., not on paid work time.

If an employee does not show proof of full compliance by the close of business on December 18, 2021, the employee will be subject to corrective action. For sworn employees employed by the Los Angeles Fire Department who proceed to a Board of Rights, the City will abide by all applicable Charter and other legal requirements. For sworn employees employed by the LAPD who proceed to a Board of Rights to determine their fitness for duty, the City will abide by all applicable Charter and other legal requirements.

At any time on or before December 18, 2021, an employee decides, in lieu of being vaccinated, to resign, retire, or, in the case of sworn personnel who are currently enrolled in the Deferred Retirement Option Program (DROP), exit DROP, the employee may show proof of filing resignation, retirement, or DROP exit paperwork with a date certain to their appointing authority, at which time they shall remain out of the workplace until such date. Proof must be provided to the appointing authority no later than December 18, 2021. From the time that the employee provides proof of intended resignation, retirement, or DROP exit and the date of the actual date of occurrence, the employee may use one of three types of time available to them in order to remain on active payroll, including and limited to: (1) accrued vacation time; (2) compensated time off, e.g., banked overtime; or, (3) Leave Without Pay.

Exemptions from the Vaccination Mandate

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

Employees who have reported a vaccination status of "not vaccinated" and who file exemption paperwork and are awaiting the result of the City's evaluation process shall be subject to the same terms applicable to employees who are not fully vaccinated and who have received a Notice, including and limited to items 2, 3, 4, and 5 as stated above.

Each employee who is required to test while awaiting the determination by the City of their exemption request shall be required to sign a Notice and to comply with its terms as

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outlined above and herein. Failure to sign and fulfill the conditions of the Notice shall constitute failure to meet a condition of employment and shall result in appropriate and immediate corrective action.

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

Exemption Approval: An approved exemption may be based on a disability, medical condition or a sincerely held religious belief. An approved deferral exemption may be based on a recent COVID-19 diagnosis or treatment. If an employee’s exemption is approved the employee must register with Bluestone for testing at (a website to be provided) and adhere to the City’s COVID-19 Workplace Safety Standards. In addition, the employee must adhere to all workplace screening requirements and safety protocols when in a City facility or work location and/or when in contact with other City employees or members of the public while working. They must also comply with any reasonable accommodations that result from good faith, interactive discussions, as applicable. Per the Ordinance, an employee who is granted an exemption must also test for COVID-19 once per week, which shall be paid for by the City and be done on paid time, i.e., not the employee’s time.

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

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

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

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1. Within fourteen (14) calendar days from the notice of denial of their exemption or expiration date of their medical deferral, the employee shall submit proof that they have received the first dose of a two-dose COVID-19 vaccine or a single dose of a one-dose COVID-19 vaccine. During this time, the employee continues to work and shall be required to test twice weekly consistent with the terms for employees subject to Notice requirements, including and limited to 2, 3, 4, and 5 as stated above. This proof of vaccination must include the date that the employee received the vaccination.
2. The employee will have no more than twenty-eight (28) calendar days from the date of having received the first dose of a COVID-19 vaccine of a two-dose regimen to receive the second dose of a two-dose vaccine regimen.
3. The employee must update their vaccination status within no more than five (5) business days from the date of having received the second dose of a two-dose vaccine regimen by submitting proof that the employee received a complete dosage of a vaccine against COVID-19. If either of the dates above falls on a weekend or observed holiday, the deadline for providing the required proof is due on the next business day.

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

Separation from City Service

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

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

For sworn employees employed by the LAPD, those employees must also pass all required reinstatement background processes conducted by the City or LAPD and can only be reinstated to a position as governed and permitted by the Civil Service Rules of the City of Los Angeles.