



Legislation Text

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City of San Leandro City Council Urgency Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

Urgency Ordinance to Mandate Proof of Vaccinations or Proof of Negative COVID-19 Test to Access Public Accommodations

WHEREAS, the novel coronavirus 19 (COVID-19) disease is caused by a virus easily transmissible from person to person and may result in serious illness or death, and is classified by the Centers for Disease Control and the World Health Organization (WHO) as a pandemic; and,

WHEREAS, COVID-19 has spread broadly throughout the State of California and remains a significant, imminent health risk to the community, especially to members of our most vulnerable populations; and,

WHEREAS, COVID-19 has been declared as a global pandemic, which is particularly severe in high risk populations, such as people with underlying medical conditions and the elderly, and the WHO has raised the health emergency to the highest level, requiring dramatic interventions to disrupt the spread of the disease; and,

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed a state of emergency in response to rising cases of COVID-19, directing state agencies to use all resources necessary to prepare for and respond to the outbreak; and,

WHEREAS, on March 16, 2020, due to an escalating increase in the number of cases in Alameda County, under San Leandro Municipal Code section 3-4-124, the Director of Emergency Services proclaimed a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 16, 2020, at its regular meeting the San Leandro City Council confirmed the Director of Emergency Services' proclamation of a local emergency and a state of emergency related to COVID-19; and,

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued a "Stay Home - Stay Healthy" proclamation closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes. The "Stay Home - Stay Healthy" proclamation identified healthcare, public health and emergency services, law enforcement, and grocery stores, amongst others as essential business sectors critical to protecting the health and well-being of all Californians; and,

WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-19, Alameda County's Public Health Officer issued the "Safer at Home" Order to control the spread of COVID-19

by closing all non-essential workplaces, requiring people to stay home except to participate in essential activities or to provide essential business services, and banning all gatherings for social, spiritual, and recreational purposes; and,

WHEREAS, on December 3, 2020, California Governor Gavin Newsom extended the “Stay Home - Stay Healthy” proclamation; and,

WHEREAS, on December 3, 2020, in order to mitigate the effects of COVID-19 within the County of Alameda, the Alameda County Health Department extended the “Safer at Home” Order to control the effects and spread of COVID-19; and,

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and,

WHEREAS, on February 3, 2021, California Governor Gavin Newsom announced that there was a California or West Coast variant of COVID-19 that had grown more common across the state; and,

WHEREAS, since the Governor’s announcement on February 3, the highly contagious Delta variant emerged, causing a spike in cases throughout the state; and,

WHEREAS, on August 3, 2021 the County of Alameda Health Officer issued Order No. 21-03 which requires all individuals in the county wear face masks when indoors in workplaces and public settings; and,

WHEREAS, as of October 9, 2021, the County of Alameda reported 115,943 cases of COVID-19, including 1,355 deaths; and,

WHEREAS, crowded indoor spaces such as gyms, movie theaters, and grocery stores pose a high risk of transmission of COVID-19; and,

WHEREAS, unvaccinated Californians are 15 to 20 times more likely to die of COVID-19 than vaccinated Californians; and,

WHEREAS, on October 11, 2021 the California Department of Public Health published data showing that the death rate among unvaccinated Californians aged 16 and older rose during September, 2021; and

WHEREAS, airborne aerosol transmission of the COVID-19 virus can occur at distances of greater than six feet; and

WHEREAS, particles carrying COVID-19 can linger in the air for up to several hours after an infected person has left a room; and

WHEREAS, an urgency ordinance is necessary to avoid the immediate threat to public peace, health, welfare, and safety such that failure to adopt this urgency ordinance could result in the avoidable exposure to COVID-19 for the City’s residents and community members.

NOW, THEREFORE, THE CITY OF SAN LEANDRO CITY COUNCIL ORDAINS AS FOLLOWS:

SEC. 1 RECITALS.

The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

SEC. 2 URGENCY FINDINGS.

The City Council of the City of San Leandro hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, welfare and safety that warrants this urgency ordinance, which findings are based upon the facts stated in the recitals above, and in the staff report dated November 1, 2021 as well as any oral and written testimony at the November 1, 2021 regular City Council meeting. This Ordinance is declared by the City Council to be an urgency ordinance under City of San Leandro Municipal Code Section 1-1-345(b) necessary for the immediate preservation of the public peace, health, welfare, and safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

SEC. 3 ORDINANCE.

The City Council hereby makes the findings contained herein and hereby adopts this uncodified Ordinance to read as follows.

Section 3.1 Definitions

The following definitions shall apply to this Ordinance:

- A. **City** means the City of San Leandro
- B. **Citation** means an Administrative citation issued pursuant to Chapter 1-12 of the San Leandro Municipal Code.
- C. **Covered Location** means the following locations in the City as defined by San Leandro Zoning Code Section 1.12.108:
 - 1. Establishments where food or drink is served indoors, including but not limited to Full Service Restaurants, Bars, Large Scale and Small Scale Fast Food Establishments, Brewpubs, and Cafés. Covered Locations do not include establishments or facilities which solely and briefly provide food or drink as part of a religious ceremony (e.g., communion or kiddush);
 - 2. Health and Fitness Centers and Instruction and Improvement Services;
 - 3. Card rooms, Dance Clubs, Entertainment Events, Game Centers, Theaters, and Theaters (Small Scale).

A Covered Location does not include any location that does not have an Indoor Portion. A Covered Location does not include any location that is already required by a separate Alameda County Order

to check proof of COVID-19 vaccination status prior to providing indoor service.

Nothing in this article shall be interpreted to preclude locations in the City that are not included in the above list from issuing proof of vaccination requirements. Nothing in this article shall be interpreted to preclude Covered Locations from issuing more stringent requirements than required by this Ordinance.

- D. **COVID-19** means coronavirus disease 2019, the infectious disease caused by the SARS-CoV-2 virus that resulted in a global pandemic, including variants thereof.
- E. **COVID-19 Vaccine** means a vaccine authorized to prevent COVID-19 by the United States Food and Drug Administration (FDA), including by way of an emergency use authorization, or by the World Health Organization (WHO).
- F. **Full Vaccination/Fully Vaccinated** means 14 or more days after completing the entire recommended series of vaccination with a COVID-19 Vaccine. Currently, an individual is considered Fully Vaccinated at least two weeks after receiving a second dose of the Pfizer or Moderna COVID-19 Vaccine or two weeks after receiving the single dose of the Johnson & Johnson COVID-19 Vaccine.
- G. **Adult Individual Eligible for a COVID-19 Vaccine** means a person 18 years of age or older, for whom a COVID-19 Vaccine is authorized for use by the FDA, including by way of an emergency use authorization or, in the case of a foreign visitor or traveler, a person for whom a COVID-19 Vaccine is authorized by the WHO.
- H. **Indoor Portion** means any part of a Covered Location with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an Indoor Portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a tent or plastic dome, if it has adequate ventilation to allow for air circulation.
- I. **Non-resident Performer** means a non-resident performing artist, nonresident professional athlete or sports team, or non-resident individual accompanying a performing artist or sports team as part of their regular employment.
- J. **Adult Patron** means an Adult Individual, aged 18 years or older, eligible to Receive a COVID-19 Vaccine who enters, patronizes, attends an event, or purchases goods or services at a Covered Location.
- K. **Photo Identification** means an original or copy of an identification card, including:
 - 1. Driver's license;
 - 2. Government issued identification card;
 - 3. School or work identification card; or
 - 4. Passport.

- L. **Proof of Negative COVID-19 Test** means a printed document, QR code, email, or text message displayed on a phone from a test provider or laboratory that shows results of a polymerase chain reaction (PCR) or antigen COVID-19 test that either has Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration or is operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services, that was conducted within 72 hours before entry into a Covered Location. The printed document, email, or text message must include the person's name, type of test performed, date of the test, and negative test result.
- M. **Proof of Vaccination** means one of the following demonstrating proof of Full Vaccination:
1. A vaccination card issued by the United States Centers for Disease Control and Prevention (CDC) specific as COVID-19 vaccination, which includes the name of the person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by another foreign governmental agency;
 2. A photo of a vaccination card (both sides), compliant with Subsection M.1. above as a separate physical photograph or stored on a phone or electronic device;
 3. Documentation of vaccination from a licensed healthcare provider; or
 4. A personal digital COVID-19 vaccine record issued by the State of California or similar documentation issued by another state, local, or foreign governmental jurisdiction, or by a private company. This Ordinance urges California residents to visit the State of California's Digital COVID-19 Vaccine Record website at myvaccinerecord.cdph.ca.gov and download a QR Code of their proof of vaccination onto their mobile phone.

Section 3.2. Proof of Vaccination Required For An Adult Patron To Enter the Indoor Portion Of A Covered Location.

- A. Beginning on November 2, 2021 and by no later than November 15, 2021, a Covered Location shall display prominently on its premises, visible to Patrons prior to entrance, an advisory notice informing Patrons that, beginning on November 2, 2021, Proof of Vaccination is required for Adult Patrons, aged 18 years or older, to enter any Indoor Portion of a Covered Location.
- B. Beginning on November 2, 2021 a Covered Location shall require each Adult Patron, aged 18 years or older, to provide Proof of Vaccination upon entering an Indoor Portion of a Covered Location. A Covered Location is required to cross-check Proof of Vaccination for each Adult Patron against Photo Identification. Subject to the exemptions below, an Adult Patron shall not be permitted to enter an Indoor Portion of a Covered Location without Proof of Vaccination.
1. An Adult Patron may be exempt from the requirements of this section if they are entitled under any applicable law to a reasonable accommodation for a medical

condition or restriction or a sincerely held religious belief, as follows.

- (a) To be eligible for an exemption due to a medical condition or restriction, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a medical condition or restriction that qualifies the Adult Patron for the exemption.
 - (b) To be eligible for an exemption due to a sincerely held religious belief, the Adult Patron must provide the Covered Location with a self-attestation that the Adult Patron has a sincerely held religious belief that qualifies the Adult Patron for the exemption.
 2. If a Covered Location determines an Adult Patron has met the requirements of an exemption pursuant to this section because of a medical condition or restriction or sincerely held religious belief, the Covered Location shall require the Adult Patron to use the portion of a Covered Location that is not an Indoor Portion. If such use is not available, the Adult Patron may be permitted to enter an Indoor Portion of a Covered location by providing Proof of Negative COVID-19 Test and Photo Identification.
 3. An Adult Patron who does not provide Proof of Vaccination and who does not qualify for an exemption may use the portion of a Covered Location that is not an Indoor Portion. An Adult Patron who does not provide Proof of Vaccination may be allowed to enter an Indoor Portion of a Covered Location for brief and limited periods of time to use the restroom, order, pick-up, or pay for food or drink “to go,” or perform necessary repairs, provided that the Patron wears a well-fitting mask at all times while in the Indoor Portion of the Covered Location. To the extent feasible, a Covered Location may offer service outside for an Adult Patron who does not provide Proof of Vaccination, including curbside pickup, drive thru delivery, and outdoor seating and dining.
 4. A Covered Location may require Proof of Vaccination upon the Adult Patron’s first in-person interaction with staff (e.g., at the time of ordering) rather than at the entrance to the establishment, but only if all such patrons wear a well-fitting mask at all times after entering the indoor portion of the facility and before showing such proof.
 5. Theaters where concessions are sold may require proof of Full Vaccination to be shown at the time of patrons’ purchase of concessions rather than at the entrance to the Covered Location.
 6. This section does not apply to a Non-resident Performer, who enters a Covered Location for purposes of performing or competing.
- C. A Covered Location must develop or may use what is provided by the City and keep a written record describing the protocol for implementing and enforcing the requirements of this Ordinance.

Section 3.4 Enforcement and Rules and Regulations.

Violations of this Ordinance are subject to enforcement under Chapter 1-12 of the San Leandro Municipal Code. For any Covered Location or Patron aggrieved by a violation of this Ordinance, any person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the Covered Location or Patron violating this Ordinance. A Covered Location or Patron, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation. Any person or entity enforcing this Ordinance on behalf of the public as provided for under applicable state law, upon prevailing, shall be entitled only to equitable, injunctive, and/or restitution relief, and reasonable attorneys' fees and costs. Nothing in this Ordinance shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this Ordinance.

The City Manager may promulgate and update as necessary rules and regulations consistent with this ordinance for further clarification of its provisions. Any rules or regulations shall have the force and effect of law, and may be relied upon by a Covered Location or Patron to determine their rights and responsibilities under this Ordinance.

Section 3.5 Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article, including its application to other persons or circumstances. The City Council hereby declares that it would have adopted this article and each and every section, subsection, sentence, clause, and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional.

Section 3.6 No Conflict with Federal or State Law.

Nothing in this article shall be interpreted so as to create any power or duty in conflict with any state or federal law.

Section 3.7 Sunset.

This ordinance shall sunset at 11:59 p.m. on January 31, 2022 or upon the lifting of the City of San Leandro Proclamation of Emergency that was ratified by the City Council on March 16, 2020, whichever occurs first, unless otherwise amended by the City Council.

SEC. 4 URGENCY CLAUSE.

The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reasons: Establishing a vaccination requirement for patrons in certain higher-risk locations in the City of San Leandro is a subject of imminent concern in light of the current and ongoing hazards of the COVID-19 pandemic, including the continuous high rate of community transmission, and the current data on the safety and efficacy of the COVID-19 vaccines. To promote the health and safety of the residents, visitors, and the employees of the City of San Leandro, this ordinance must become effective as soon as possible. For all these reasons, the

ordinance shall become effective on November 2, 2021 pursuant to San Leandro Municipal Code Section 1-1-345(b).