

SIDE LETTER AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION (POA)

Mandatory Vaccination and Testing for Stage 1 and Stage 2

The City and the POA have been engaged in ongoing discussions over the impacts of the City's Guidelines/Procedures for Mandatory Vaccination/Testing Verification (the "Policy"), City **Administrative Policy Manual Section 1.3.12**.

The parties have reached the agreements listed below regarding the implementation process of **Phase 1 and Phase 2** of the City's **Policy**.

Phase 1

1. During Phase 1, until October 3, 2021, all bargaining unit members will be required to provide proof of vaccination or provide proof of a weekly negative COVID-19 test. Members granted either a medical and/or religious exemption from the City's vaccination requirement must also provide proof of a weekly negative COVID-19 test.
2. All bargaining unit members will be required to follow other safety protocols and policies issued by the City of San Jose or the San Jose Police Department.
3. Bargaining unit members who receive their COVID-19 test results while on their day off will have to submit their negative test results to the Department at the beginning of their shift on their first day back to work.
4. Members working on the midnight shift will be able to flex their schedules, with supervisory approval, in order to take a COVID-19 test during their off-duty hours. For example, a member generally required to begin their shift at 2100 hours, may flex to 2200 hours one day per week and use the flexed hour of release time to attain a COVID-19 test.
5. Bargaining unit members assigned to the midnight shift who are unable to flex their time pursuant to number 4 above and therefore, have been required to test on their own time during the pay period will be provided with one hour of paid time, at the appropriate rate, per week to cover that time.
6. All applications submitted by bargaining unit members for a religious and/or medical exemption from the testing and/or vaccination requirements under the Policy will be subject to the City's existing procedures for the interactive process, including undergoing the City's interactive process for reasonable accommodations. If the City proposes to change its procedures for determining medical and/or religious exemptions, it will provide the POA with advance notice and an opportunity to meet and confer in good faith to the extent the POA identifies any impacts of said changes.

7. During Phase 1, bargaining unit members who qualify for a medical and/or religious exemption may continue in their current assignments provided they comply with submission of negative test results to the Department and other health and safety requirements.
8. The parties agree to continue to discuss on-site testing for bargaining unit members.

Phase 2

9. At this time, the City is able to reasonably accommodate approved medical and religious exemptions from receiving the COVID-19 vaccination under Phase 2 by permitting bargaining unit members to submit negative COVID-19 test results two (2) times per week to their designated COVID-19 department liaisons. Testing may be done on the member's own time outside of their regularly assigned work schedule or they may request to use their available leave balances, subject to supervisory approval, if they choose to submit to testing during their scheduled work day. The City may revisit this accommodation at any time, and will engage in the interactive process with any affected member should any changes to the reasonable accommodation be deemed necessary.
10. If a bargaining unit member obtains the first dose of either the Moderna or Pfizer COVID vaccination by October 1, 2021, but has not yet had both doses administered, the member will not be subject to any disciplinary proceedings, provided the member obtains a second dose of the same vaccination within the recommended timeframe after the first dose. During the period after the first dose, but before the member is verified as fully vaccinated, the member will not be placed on leave and will be permitted to stay in their current assignment, provided that the member complies with health and safety requirements while performing their duties and they submit negative test results to the Department twice a week as provided in number 9 above for members with approved medical and religious exemptions.
11. The parties agree that effective October 4, 2021, members who remain unvaccinated and who do not have medical and religious exemptions will be required to submit to COVID-19 testing twice (2) weekly on their own time and at the employee's expense, and will not be entitled to use any paid leave or take the test during their regularly assigned work schedule. If an employee does not comply with the testing requirements, they may be subject to disciplinary action, up to and including termination.
12. In addition to the terms set forth in number 11 above, in lieu of termination, sometime after October 1, 2021, as a first step in the disciplinary process, members who remain unvaccinated and who do not have an approved medical and/or religious exemption, will be issued a Notice of Intended Discipline (NOID) for a forty (40) hour suspension without pay. If someone is actively engaged in the interactive process related to an exemption, they will also not be subject to this provision until and unless the exemption has been denied. The City agrees it will follow the due process requirements set forth in the parties' Memorandum of Agreement and City Policy Manual Section 2.1.3. The timing of the issuance of the NOIDs will be staggered in order to avoid any service impacts with the goal of serving all NOIDs by October 31, 2021. The POA agrees not to contest the City actions as described in this section (12).

13. The City agrees that it will provide members served with a NOID with a period of up to seven (7) days following the Skelly Hearing to allow for a final opportunity to comply with the Phase 2 vaccination requirement before the City issues the Notice of Discipline.
14. The parties agree that terms set forth in paragraph 12 above is the first step in the disciplinary process and for those that remain unvaccinated and without an approved exemption after December 31, 2021, may be subject to termination from City employment.
15. If a member resigns prior to the issuance of a Notice of Discipline for termination by the City for failure to comply with the Phase 2 vaccination requirement under the Policy, the member may be reemployed within three years pursuant to San Jose Municipal Code Section 3.04.1530, provided that the member is verified as fully vaccinated against Covid-19. Upon their return to work, the member may recover their seniority at the time of their separation, and any accrued leave balances that were not paid out upon the member's separation from City service.


The City and the POA agree that this Side Letter Agreement shall be subject to reopening for a material change in circumstances, such as if the City seeks to promulgate alternative vaccination and testing rules, or if the City or POA identifies additional health and safety issues.


This agreement shall become effective upon the signature and shall be incorporated into the parties' MOA by this reference.

FOR THE CITY:


 _____ 9/30/2021
 Jennifer Schembri Date
 Director of Employee Relations
 Director of Human Resources

FOR THE UNION:


 _____ 9/30/2021
 Sean Pritchard Date
 President, SJPOA


 _____ 9/30/2021
 Steve Slack Date
 Vice President, SJPOA